TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1961

No. 166

MARINE ENGINEERS BENEFICIAL ASSOCIATION, ET AL., PETITIONERS,

vs.

INTERLAKE STEAMSHIP COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

PETITION FOR CERTIORARI FILED JUNE 21, 1961
CERTIORARI GRANTED OCTOBER 9, 1961

SUPREME COURT OF THE UNITED STATES

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INDEX

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[fol. 8]

IN DISTRICT COURT OF ST. LOUIS COUNTY

STATE OF MINNESOTA

6th JUDICIAL DISTRICT

INTERLAKE STEAMSHIP COMPANY, a corporation, and PICKANDS-MATHER & Co., a co-partnership, Plaintiffs,

vs.

MARINE ENGINEERS BENEFICIAL ASSOCIATION, CHARLES LA-PORTE, FRED L. BEATTY, JOHN DOE, RICHARD ROE, and MARINE ENGINEERS BENEFICIAL ASSOCIATION, LOCAL 101.

COMPLAINT

Plaintiffs for their complaint against defendants allege:

1. Plaintiff Interlake Steamship Company is a corporation organized and existing under the laws of the State of Delaware having its principal office and place of business at [fol. 9] 2,000 Union Commerce Building, Cleveland, Ohio. Plaintiff Interlake Steamship Company is engaged principally in the operation of 32 bulk cargo vessels on the Great Lakes, transporting principally iron ore, coal, stone and grain between numerous Great Lakes ports, including Duluth, Minnesota, in the United States and Canada. Plaintiff normally employs approximately 1,076 individuals in the actual operation of its vessels. Plaintiff Pickands Mather & Co. is a co-partnership with its principal office and place of business at the Union Commerce Building in Cleveland, Ohio, and it also maintains offices in Duluth, Minnesota. Plaintiff Pickands Mather & Co. is the managing agent for plaintiff Interlake Steamship Company.

2. Defendant Marine Engineers Beneficial Association, AFL-CIO is a voluntary unincorporated association affiliated with the AFL-CIO which admits to membership engineers and other similar types of supervisory personnel employed in the operation of commercial vessels.

3. Defendant Charles LaPorte is a member of Local 101, Marine Engineers Beneficial Association, AFL-CIO and is the business representative of that organization including said organization's activities in Duluth, Minnesota.

4. Defendant Fred L. Beatty is a member of Local 101, Marine Engineers Beneficial Association, AFL-CIO.

[fol. 10] 5. All other persons who have acted and are acting in concert with the defendants named herein are a part of the defendant class and are made defendants herein under the name and style of John Doe and Richard Roe, their true names being unknown to plaintiffs.

6. Each of the individual defendants named herein is sued individually and as an officer, agent, or member, as the case may be, of the defendant organization, and such defendant officers, agents, committeemen and members mentioned above are duly authorized to and do represent and receive orders and directions from said defendant organization in respect to all matters complained of herein.

7. The names of many of the members of the defendant organization are unknown to plaintiffs and, if known, are too numerous to be included herein. The questions herein involved are of common and general interest to all of such members as a class. Each named defendant who is sued individually and as an officer, agent, committeeman or member of defendant organization is in fact the duly authorized representative of such organization and its members and is sued as such and as the representative of a class consisting of the members of such organization. Plaintiffs say that the trial of the issues herein may be fairly had through the defendants named herein.

[fol. 11] 8. No labor dispute nor any dispute concerning wages, hours and other terms and conditions of employment, exists between plaintiffs and any of its supervisory employees who would be eligible for membership in said defendant organization.

9. Since on or about November 12, 1959, defendants, and each of them, and others associated and acting in con-

cert with them did and threatened to do the following things:

(a) Unlawfully picketed the plaintiffs' vessel Samuel Mather and picketed the entrance to dock No. 1 of the Carnegie Dock & Fuel Company located at 600 Garfield Avenue, Duluth, Minnesota with banners bearing the legend

"Pickards [sic] Mather Unfair to Organized Labor. This Dispute Only Involves P.M. M.E.B.A. Local 101".

"M.E.B.A. Local 101. AFL-CIO Requests Pickards [sic] Mather Engineers to Join With Organized Labor to Better Working Conditions. This Dispute Only Involves P.M."

(b) Induced and persuaded individuals employed by Carnegie Dock & Fuel Company to engage in a stoppage or suspension of work and a refusal to perform the services of their employment in connection with the unloading of said vessel have prevented and interfered with such loading.

[fol. 12] (c) Brought about a violation by said Carnegie Dock & Fuel Company of the terms of its contract relative to the unloading of plaintiffs' vessel.

(d) Interfered with plaintiffs' conduct of its normal business operations and with plaintiffs' services to its customers in the ordinary course of its business.

(e) Interfered with the operation of vehicles and the operators thereof when neither the owners nor operators of said vehicles were at the time parties to any strike.

(f) Having more than one person picket a single entrance to a place of employment where no strike is in progress.

(g) Compelling or attempting to compel persons to join said labor organization by threatened or actual unlawful interference with his person.

(h) Interfering with the free and uninterrupted use of a public road and methods of transportation or conveyance and wrongfully obstructing ingress to and egress from said Carnegie Dock & Fuel Company and said Steamer Samuel Mather.

(i) To picket each and every vessel of the Interlake Steamship Company coming to or remaining in the Duluth-Superior harbor.

(j) By mass picketing and a showing or demonstra-[fol. 13] tion of force and threats of force and by other means intimidating and coercing plaintiffs' employees and the employees of Carnegie Dock & Fuel Company in violation of the statutes of the State of Minnesota and in further violation of the rights of said employees, all in violation of Minnesota Statutes.

10. Such picketing has resulted in a violation by the Carnegie Dock & Fuel Company of the terms of its contract relative to the unloading of plaintiffs' vessel, has interfered with plaintiffs' conduct of its normal business operations and with the conduct of said Carnegie Dock & Fuel Company's normal business operations.

11. Defendant organization and individuals, and the other individuals acting in concert and associated with them, are conducting such picketing for the purpose and with the intent of coercing and compelling plaintiffs to recognize and bargain with defendant organization as representative of plaintiffs' supervisory employees and to require plaintiffs to coerce and compel their supervisory employees to become members of defendant organization. By the express terms and provisions of Sec. 14 (a) thereof, the defendant organization is entirely excluded from the terms and provisions of the National Labor Relations Act and by the terms of Minnesota Statute 179.01, Subd. 4, said supervisors are not employees and such picketing is for an unlawful purpose and objective.

[fol. 14] 12. Defendant organization and individuals, and the other individuals acting in concert and associated with them have violated Minnesota Statute 179.11 (2), (4), (5), (6), (7), and (8).

13. A continuation and extension of the unlawful actions and conduct of the defendants, which will continue and be extended to all other of plaintiffs' vessels in the Duluth-Superior harbor unless enjoined by an Order of this Court, will result in possible and probable danger of injury to plaintiffs' employees and the employees of Carnegie Dock & Fuel Company and other employees similarly situated and will result in irreputable [sic] injury and loss to plaintiffs, the amount of which cannot be presently ascertained plaintiffs have no adequate remedy at law.

14. The picketing by defendants as alleged herein will have extensive and widespread repercussions. Such picketing will have particularly drastic effects at the present time inasmuch as virtually no deliveries of iron ore, stone and coal were made to the lower Great Lakes region during the recent long steel strike and such supplies at the mills are very low at the present time. The end of the season of navigation on the lakes is rapidly approaching and operations at this time of the year are always subject to the possibility of adverse weather conditions. Unless plaintiffs' entire fleet can operate to the fullest possible extent between [fol. 15] now and the end of the navigation season, certain mills will not have sufficient stockpiles of ore and other materials on hand to operate at capacity and without interruption until the resumption of navigation in the spring of 1960 with resultant hardship on the employees of such mills and on the economy of the midwest region.

Wherefore, plaintiffs pray that this Court issue an injunction restraining and enjoining the defendants, and each of them, their officers, agents, representatives and employees, and all persons acting in aid of or in conjunction or in concert with them, or any of them, and all others to whom knowledge of said order shall come from:

1. Picketing in any manner, peaceful or otherwise at or in the vicinity of any of plaintiffs' vessels, including the vessel Samuel Mather, and the dock operated by the Carnegie Dock & Fuel Company and located at 600 Garfield Avenue in Duluth, Minnesota.

2. Interfering in any way with any of plaintiffs' employees in connection with ingress or egress to or from any

of plaintiffs' vessels in the Duluth harbor including the vessel Samuel Mather.

3. Interfering in any way with the performance of services by the employees of the Carnegie Dock & Fuel Company or any other dock company in connection with the loading or unloading of any of plaintiffs' vessels, including the vessel Samuel Mather.

[fol. 16] 4. Loitering, grouping or congregating at or near any of plaintiffs' vessels in the Duluth harbor including the vessel Samuel Mather or at or in the vicinity of the dock operated by Carnegie Dock & Fuel Company or at or near any entrances or exits to or from said dock or any other dock in the Duluth harbor at which any of plaintiffs' vessels are moored.

5. Creating any disorder in, at or near any of plaintiffs' vessels, including the vessel Samuel Mather, and from threatening, coercing, intimidating, molesting or interfering with any of plaintiffs' officers, agents, and employees and others having business with plaintiffs at or on any of their vessels, including the vessel Samuel Mather.

6. Committing any acts of force, violence, intimidation or coercion in, at or near any of plaintiffs' vessels including the vessel Samuel Mather, or at any place against any of plaintiffs' officers, agents, representatives and employees.

7. Ordering, inducing, intimidating, coercing, or attempting to order, induce, intimidate or coerce any of plaintiffs' employees with the intent or effect of causing them to fail or refuse to perform any services for plaintiffs.

8. Ordering, inducing, intimidating, coercing or attempting to order, induce, intimidate or coerce any person, firm or corporation or the employees of any person, firm or corporation or any other labor organization or the mem-[fol. 17] bers of any other labor organization with the intent or effect of causing them to fail or refuse to perform any services in connection with the loading or unloading of any of plaintiffs' vessels.

9. Conspiring or continuing to conspire or act in concert in combination with each other or with any other individual, person, labor organization, firm or corporation whatsoever to carry on, perform, or do any of the actions hereinbefore in this complaint described, or for which relief has been hereinabove prayed.

10. Advising, protecting, aiding, assisting or abetting any person or persons in the commission of any of the acts hereinbefore enumerated.

Plaintiffs further pray that pending the final hearing and determination of the issues hereof, a temporary injunction be issued by this Court, for such other and further relief, either permanent or temporary, as equity and plaintiffs' cause may require and for their costs herein expended.

Nye, Montague, Sullivan & McMillan, By Edward T. Fride, 1200 Alworth Building, Duluth 2, Minnesota, Attorneys for Plaintiffs.

[fol. 18] *Duly sworn to by Kent Davis, jurat omitted in printing.*

In District Court of St. Louis County

Notice of Motion and Motion to Dismiss

To the plaintiffs above named:

You will please take notice that before the Judge of the above named court in the Court House, in the City of Duluth and said County, on November 18, 1959, at 2:00 p.m. the above named defendants will make a special ap-[fol. 19] pearance for the purpose of moving the court to dismiss the above entitled action on the grounds that the court does not have jurisdiction of said action.

Lewis, Hammer, Heaney, Weyl & Halverson, By Gerald W. Heaney, 700 Providence Building, Duluth 2, Minnesota, Attorneys for Defendants.

IN DISTRICT COURT OF ST. LOUIS COUNTY

ANSWER

Defendants, for their answer to the complaint herein:

I.

Denies each and every allegation therein contained except as may hereinafter be admitted, qualified or explained.

II.

Admits the allegations contained in paragraphs 1, 2, 3, 4, and admits the allegation in paragraph 9 to the extent that picketing occurred on or about November 12, 1959, at or near the place indicated in said paragraph.

[fol. 20] Wherefore, defendants pray that the complaint herein be dismissed.

Lewis, Hammer, Heaney, Weyl & Halverson, By Gerald W. Heaney, 700 Providence Building, Duluth 2, Minnesota, Attorneys for Defendants.

IN DISTRICT COURT OF ST. LOUIS COUNTY

ORDER OF SUBMISSION—December 1, 1959

This cause came on for hearing before the Court on the 18th day of November, 1959, pursuant to Order to Show Cause heretofore issued herein, on plaintiffs' motion for a temporary injunction, and was submitted to the Court on the 24th day of November, 1959. Nye, Montague, Sullivan & McMillan, by Edward T. Fride, and Baker, Hostetler & Patterson, by Charles D. Johnson, appeared for the plaintiffs, and Lewis, Hammer, Heaney, Weyl & Halverson, by Gerald W. Heaney, appeared for the defendants, and the Court, having heard the testimony of the witnesses and the arguments of counsel and being fully advised in the premises, now makes the following Findings of Fact, Conclusions of Law and Order for Temporary Injunction:

[fol. 21]

IN DISTRICT COURT OF ST. LOUIS COUNTY

FINDINGS OF FACT—December 1, 1959

1. Plaintiff Interlake Steamship Company, a Delaware corporation (hereinafter referred to as "Interlake"), and plaintiff Pickands Mather & Co., a copartnership having its principal office and place of business at Cleveland, Ohio, are respectively the owner and operating agent of a fleet of Great Lakes bulk cargo vessels which transports coal, iron ore and other materials between numerous Great Lakes ports in the United States and Canada, including Duluth, Minnesota.

2. Defendant Marine Engineers Beneficial Association Local 101, (hereinafter referred to as "MEBA") as a voluntary unincorporated association which admits to membership licensed marine engineers employed on commercial vessels on the Great Lakes.

3. Defendant Charles LaPorte is an agent and business representative of defendant MEBA Local 101, and his duties include the direction of said defendant's activities in Duluth, Minnesota.

4. On November 11, 1959, the Interlake vessel Samuel Mather arrived at the dock of the Carnegie Dock & Fuel Company at Duluth, Minnesota, with a cargo of coal to be unloaded at said dock. The unloading of the vessel by the employees of the Carnegie Dock & Fuel Company, which would ordinarily require about 34 hours, commenced shortly after its arrival.

[fol. 22] 5. At approximately 6:30 a.m., November 12, 1959, five or six individuals commenced picketing the single private road entrance to the dock and walked continuously around in a tight circle across that road. Two of these individuals carried signs which read:

"Pickands Mather Unfair to Organized Labor. This Dispute Only Involves P-M. M.E.B.A. Loc. 101 AFL-CIO."

Two of these individuals carried signs which read:

"M.E.B.A. Loc. 101. AFL-CIO. Request P-M Engineers to Join With Organized Labor to Better Working Conditions. This Dispute Only Involves P-M."

6. From the time of the commencement of this picketing, the employees of the Carnegie Dock & Fuel Company, although having entered the premises of their employer despite such picketing and having performed other duties of their employment, have failed and refused to perform any services whatsoever in connection with the unloading of the Samuel Mather although ordered to do so on numerous occasions.

7. As a further result of such picketing, certain independent truck drivers failed and refused to enter the dock premises to take delivery of coal from the dock company and left their vehicles parked on the single road entrance [fol. 23] to the dock for approximately two hours on the morning of November 12, 1959.

8. Defendant Charles LaPorte stated at or near the picket line on the morning of November 12, 1959, that it was the intention of MEBA Local 101 to picket Interlake vessels wherever it could locate them in the Duluth, Minnesota, harbor.

9. The picketing at the dock company premises continued until the service of the temporary restraining order issued by this Court in the afternoon of November 12, 1959. Despite the absence of formal picketing at the dock company's premises since that time, the dock company employees have continued to refuse to unload the Samuel Mather.

10. The Carnegie Dock & Fuel Company dock at Duluth, Minnesota, has facilities for the unloading of only one vessel at a time. The Interlake vessel Pickands, also loaded with coal for the same dock, arrived at Duluth, Minnesota, the morning of November 15, 1959, and has been anchored outside the harbor ever since that date pending the unloading of the Samuel Mather.

11. At approximately 10:55 p.m., November 12, 1959, four or five individuals appeared at the entrance to the Duluth, Minnesota, plant of Interlake Iron Corporation and walked continuously across the entrance, blocking the [fol. 24] street, in a circle carrying signs bearing the legends set forth in paragraph 5 hereof. At that time, the Interlake vessel Mills was unloading a cargo of coal for use at the Interlake Iron plant at the plant dock approximately 3,000 feet from the place of such picketing. The picketing at the entrance to the Interlake Iron Corporation plant ceased approximately one hour later upon the service of the temporary restraining order upon the pickets.

12. Prior to the commencement of the picketing as described above on November 12, 1959, there had been no contact whatsoever between plaintiffs and defendants, nor had defendant MEBA Local 101, or anyone acting for or on its behalf, made any demand or request whatsoever, either written or oral, of plaintiffs or either of them.

13. All engineers and assistant engineers employed on Interlake vessels stand watches during which they are in charge of and responsible for the operation and condition of the vessel's propulsion mechanism and responsibly direct, control and supervise the work of the firemen, oilers and coal passers on duty during such watch; they hire, fire, transfer and change the status of and discipline the persons working under them and have authority to and do make effective recommendations respecting the employment and tenure of employment of the people working under them; [fol. 25] they handle initially grievances of the employees who are subject to their supervision; the exercise of authority by the engineers and assistant engineers requires the use of independent judgment and discretion; and all such engineers are required to be licensed by the United States Coast Guard.

14. All of the engineers and assistant engineers employed on all Interlake vessels are "supervisors" within the meaning of the National Labor Relations Act, as amended.

15. The acts of the defendants specified herein have caused and are causing serious economic and monetary loss

and irreparable damage to the plaintiffs by preventing the unloading and subsequent loading of the Steamers Mather and Pickands at a loss of $6,000 a day exclusive of profit and if defendants' threats to picket all Interlake vessels coming into the Duluth harbor were carried out, such would result in interference with the majority of plaintiffs' vessels.

16. The further purpose and objective of the picketing and activities of MEBA Local 101, hereinabove described, is to secure from plaintiffs the same type of agreement or understanding which it has obtained from other employers operating bulk cargo vessels on the Great Lakes. Every agreement or understanding between said defendant and other Great Lakes vessel companies includes a provision [fol. 26] requiring every licensed engineer hired after a specified date to become a member of said defendant organization within thirty days from the date of his employment as a condition of continued employment.

17. The further purpose and objective of defendants' picketing and activities as described above was to coerce, intimidate and induce plaintiffs to force, compel or induce engineers employed on Interlake vessels to become members of MEBA Local 101 and was for the purpose of injuring plaintiffs in their business because of their refusal to in any way interfere with the rights of engineers employed on Interlake vessels to join or not to join said defendant organization.

18. The further purpose and objective of defendants' picketing and activities as described above was to coerce and intimidate plaintiffs in order to secure recognition from plaintiffs of MEBA Local 101 as the collective bargaining agent for the licensed engineers employed on Interlake vessels.

19. MEBA and MEBA Local 101 have consistently contended and taken the position in all proceedings involving them, or either of them, before the Federal Courts and before the National Labor Relations Board that neither such Courts nor the Board have any jurisdiction over them

because they are not "labor organizations" within the meaning of the National Labor Relations Act, as amended.

[fol. 27] 20. Defendant Marine Engineers Beneficial Association and defendant Local 101 do not represent a majority of the licensed engineers employed by plaintiffs, nor are such organizations the authorized collective bargaining representative of said engineers.

21. The activities of defendants above described constitute compulsion to plaintiffs to commit an unfair labor practice within the meaning of Minnesota Statutes 179.12 and constitute a violation of Minnesota Statutes 179.12 (3).

22. The activities of the defendants above described do not constitute a violation of Minnesota Statutes 179.11.

23. The activities of defendants did not include the use of violence or threats of violence.

24. The policy of the State of Minnesota protects the freedom of employees to decline to associate with his fellows and assures freedom of association, self-organization and designation of representatives of his own choosing free from the interference, restraint or coercion of employers.

25. The activities of defendants above described are in violation of the public policy of Minnesota as declared by the statutes and the Supreme Court.

[fol. 28]

IN DISTRICT COURT OF ST. LOUIS COUNTY

CONCLUSIONS OF LAW—December 1, 1959

1. This case does not involve any "labor organization" within the meaning of the National Labor Relations Act, as amended.

2. All of the engineers and assistant engineers employed on all Interlake vessels are "supervisors" within the meaning of that term as defined in the National Labor Relations Act, as amended.

3. This Court has jurisdiction of this action since no "labor organization" subject to the jurisdiction of the Na-

tional Labor Relations Board is involved in this case and since organizational activities of an organization attempting to secure collective bargaining rights for supervisory employees are excluded from the jurisdiction of the National Labor Relations Board and do not constitute protected activities under the National Labor Relations Act, as amended.

4. In attempting to require plaintiffs to recognize MEBA Local 101 as the collective bargaining agent for certain of plaintiffs' supervisory employees, defendants are seeking an unlawful objective contrary to the State and Federal policies as declared by the Minnesota Legislature and Minnesota Courts and as declared by Congress in Section 14 (a) of the National Labor Relations Act, as amended

5. The provisions of the Minnesota Labor Relations Act (Minn. Stats. Sections 179.01 et seq.), except for the pro- [fol. 29] visions of Sec. 179.16, apply to the defendants inasmuch as supervisors are not excluded from the definition of the term "employee" contained in said Act and organizations of supervisors are not excluded from the definition of the term "labor organization" contained in said Act.

6. The picketing and other acts of the defendant as described herein for the purposes stated herein are intended to require or compel the plaintiffs to commit an unfair labor practice within the meaning of Minn. Stats. Sec. 179.12, Subd. 3, particularly in the light of the public policy of the State of Minnesota as declared in Minn. Stats. Sections 179.10 and 185.08, and therefore represent unlawful acts.

7. The acts of the defendants in seeking to require plaintiffs to compel, coerce, or require licensed engineers employed on Interlake vessels to become members of MEBA Local 101 irrespective of their wishes, represent violations of the public policy of the State of Minnesota as declared in Minn. Stats. Sec. 185.08, and therefore represent an unlawful objective.

8. Plaintiffs are threatened with irreparable injury and damage by defendants' picketing and other activities and plaintiffs have no adequate remedy at law.

9. The Minnesota Anti-Injunction Act does not apply to this proceeding and does not prevent the issuance of a [fol. 30] temporary injunction against the activities of the defendants in seeking unlawful objectives in violation of the expressly declared policy of both State and Federal Statutes, especially the policy of the State of Minnesota as declared in Sec. 185.08 of the Anti-Injunction Act; Minnesota Statute 179.14 specifically excepts the Anti-Injunction Act from applicability where a violation of 179.12 is found; in any event the record in this proceeding discloses the existence, or the inapplicability, of each condition to the granting of injunctive relief specified in Minn. Stats. Sec. 185.13.

In District Court of St. Louis County

Order for Temporary Injunction—December 1, 1959

It is ordered, that upon the filing within two days of a bond by plaintiffs, approved by me, in the penal sum of Two Thousand Dollars ($2,000.00), a temporary injunction issue commanding defendants, and each of them, and all persons acting in aid or in conjunction or in concert with them, to refrain from:

1. Picketing in any manner, peaceful or otherwise, at or in the vicinity of any of plaintiffs' vessels in the Duluth harbor, including the vessel Samuel Mather, and the dock operated by Carnegie Dock & Fuel Company at 600 Garfield Avenue, Duluth, Minnesota, and any other dock or similar company at or near which any of plaintiffs' vessels are moored for purposes of loading or unloading.

[fol. 31] 2. Interfering in any way with any of plaintiffs' employees in connection with ingress or egress to or from any of plaintiffs' vessels in the Duluth harbor including the vessel Samuel Mather.

3. Interfering in any way with the performance of services by the employees of Carnegie Dock & Fuel Company, and any other dock or similar company at

or near which any of plaintiffs' vessels are moored for the purposes of loading or unloading.

4. Loitering, grouping or congregating at or near any of plaintiffs' vessels in the Duluth harbor including the vessel Samuel Mather, or at or in the vicinity of the dock operated by Carnegie Dock & Fuel Company, and any other dock or similar company at or near which any of plaintiffs' vessels are moored for the purposes of loading or unloading, or at or near any entrances or exits to or from any of said docks.

5. Creating any disorder in, at or near any of plaintiffs' vessels in the Duluth harbor, including the vessel Samuel Mather, and from threatening, coercing, intimidating, molesting or interfering with any of plaintiffs' officers, agents, and employees and others having business with plaintiffs at or on any of its vessels in said harbor, including the vessel Samuel Mather.

[fol. 32] 6. Committing any acts of force, violence, intimidation or coercion in, at or near any of plaintiffs' vessels in the Duluth harbor, including the vessel Samuel Mather, or at any place against any of plaintiffs' officers, agents, representatives and employees.

7. Ordering, inducing, intimidating, coercing, or attempting to order, induce, intimidate or coerce any of plaintiffs' employees with the intent or effect of causing them to fail or refuse to perform any services for plaintiff.

8. Ordering, inducing, intimidating, coercing or attempting to order, induce, intimidate or coerce any person, firm or corporation or the employees of any person, firm or corporation or any other labor organization or the members of any other labor organization with the intent or effect of causing them to fail or refuse to perform any services in connection with the loading or unloading of any of plaintiffs' vessels.

9. Conspiring or continuing to conspire or act in concert in combination with each other or with any other individual, person, labor organization, firm or

corporation whatsoever to carry on, perform, or do any of the actions hereinbefore in this order prohibited.

10. Advising, protecting, aiding, assisting or abetting any person or persons in the commission of any [fol. 33] of the acts hereinbefore prohibited.

until final judgment herein or until further order of the Court.

It is further ordered, that until the filing of said bond within said two days, the temporary restraining order issued herein on November 12, 1959, be continued in full force and effect.

Dated this 1st day of December, 1959.

By the Court: Mark Nolan, Judge thereof.

IN DISTRICT COURT OF ST. LOUIS COUNTY

MEMORANDUM—December 1, 1959

Plaintiffs, as the owner and operating agent of a fleet of Great Lakes bulk cargo vessels, are seeking a temporary injunction to prevent the picketing of its vessels and the dock at which they call in the Duluth area by Marine Engineers Beneficial Association Local 101 and various individual defendants. Picketing by the defendants started early on the morning of November 12, 1959, at the Duluth dock of the Carnegie Dock & Fuel Company where the Interlake vessel Samuel Mather was being unloaded. The dock workers stopped unloading coal from the vessel when the picketing started and have continued to refuse to unload it, although they have continuously entered the dock [fol. 34] property and have performed other services for their employer. The defendants also conducted picketing for a brief period the night of November 12, 1959, at the Interlake Iron Corporation plant in Duluth where another Interlake steamship was unloading coal.

The initial question presented by the motion for a temporary injunction relates to the jurisdiction of this Court

over this action. While it is clear that State courts lack jurisdiction over actions involving activities which are covered within the scope of the National Labor Relations Act and within the jurisdiction of the N.L.R.B., it is likewise clear that State courts retain jurisdiction over matters not covered by the Act and excluded from the Board's jurisdiction. Garner v. Teamsters' Union, 346 U. S. 485 (1953), and McLean Distributing Co. v. Brewery and Beverage Drivers, 254 Minn. 204, 94 N. W. 2d 514 (1959), cert. den. 360 U. S. 917.

Supervisory employees are specifically excluded from the definition of the term "employees" in Section 2(3) of the National Labor Relations Act and groups of supervisors are excluded from the definition of the term "labor organization" in Section 2(5) of the Act. In addition, Section 14(a) of the Act provides that no employer subject to the Act shall be compelled to deem supervisors as employees for the purpose of any law, either national or local relating to collective bargaining.

The record in this case does not show that MEBA Local 101 admits to membership any non-supervisory employee, [fol. 35] and in any event it is clear that its membership is composed primarily and almost exclusively of supervisors. The case of Bull Steamship Co. v. MEBA, 250 F. 2d 332 (1957) holds that MEBA is not a labor organization within the meaning of the N.L.R.A. and that the Federal courts have no jurisdiction over it notwithstanding the fact that it might admit to membership some few non-supervisory individuals.

Insofar as the Interlake situation is concerned, the record discloses that MEBA Local 101 is seeking to organize or secure bargaining rights for licensed engineers. Without reciting the detailed evidence, the record in this case plainly shows that all of the engineers and assistant engineers employed on the Interlake vessels are supervisors within the meaning of that word as defined in Section 2(11) of the N.L.R.A. In 1949 the N.L.R.B. held in the case of Globe Steamship Co., et al. and Great Lakes Engineers Brotherhood, Inc., 85 N.L.R.B. 475, that the engineers and assistant engineers on Interlake vessels were supervisors and that

an organization claiming to represent them could not obtain an election to secure collective bargaining rights. The record in this case shows that there has been no change in the duties or functions of Interlake's licensed engineers since the date of that decision.

MEBA Local 101 admitted on the record in this case that it could not secure collective bargaining rights for Inter- [fol. 36] lake's licensed engineers through an N.L.R.B. election. Its activities which plaintiffs seek to enjoin are, therefore, completely excluded from the Act and from the Board's jurisdiction, and the State court jurisdiction remains unimpaired.

It is particularly significant that MEBA has contended in all proceedings involving it in the Federal courts and before the N.L.R.B. that it is not a labor organization. Its President made an unequivocal affidavit to that effect in the Bull case. This court must conclude that MEBA is bound by its own admissions and the position which it has taken in other proceedings and cannot be permitted to attempt to place itself above any law, by claiming in this Court that the Federal courts and the Board have exclusive jurisdiction.

This case therefore falls within the doctrine enunciated this year by our Supreme Court in the McLean case, supra, namely, that State courts in Minnesota have jurisdiction to enjoin picketing and other acts which are not covered within the scope of the N.L.R.A. or the jurisdiction of the N.L.R.B. The case of Norris Grain Co. v. Seafarers International Union, 232 Minn. 91, 46 N. W. 2d 94 (1950) is not applicable since that case involves organizational picketing by a union attempting to organize unlicensed seamen (not supervisors) who were entitled to seek an N.L.R.B. election [fol. 37] to obtain collective bargaining rights, the exact opposite of the facts presented by this case.

The Court therefore holds that it has jurisdiction of this particular action.

There is no inconsistency in the application of the Minnesota Labor Relations Act (Section 179.01 et seq.) to this case. Supervisors are certainly employees in any accepted sense of the term and are excluded from the definition of

employees in the N.L.R.A. only because of an express provision to that effect. No such exclusion appears in the definition of the term "employee" in Section 179.01, Subd. 4, of the Minnesota Act. The definition of the term in the Minnesota Act is practically identical with that in the old Wagner Act under which it was held that supervisors were employees who were covered by the Act. Packard Motor Car Co. v. N.L.R.B., 330 U. S. 485 (1947). The fact that the Minnesota legislature expressly excluded supervisory employees from Section 179.16 establishes that they were not overlooked and that they were not intended to be excluded from other portions of the Act.

Section 179.12, Subd. 3, of the Minnesota Labor Relations Act provides that it shall be an unfair labor practice for an employer:

> "To encourage or discourage membership in any labor organization by discrimination in regard to hire or tenure of employment or any terms or conditions of employment; * * *."

[fol. 38] This Court would be credulous indeed to believe under the circumstances of this case that the defendants had no thought of coercing or compelling the plaintiffs to interfere with the right of their employees to join or not to join MEBA Local 101. Counsel for the defendants admitted on the record that MEBA Local 101 was seeking from plaintiffs the same type of agreement or understanding which it has with other Great Lakes vessel companies. Attached hereto is a copy of defendants' counsel's statement which includes this admission. This statement must be viewed in the light of the testimony of Mr. Pelfrey, Acting Secretary-Treasurer of MEBA Local 101, and the only Union witness. He stated:

> "Q. What are the terms of that contract with the Tomlinson fleet, respecting union membership?
>
> A. The same as the Pittsburgh Steamship Company; old employees do not have to join the union, all new employees must join within 30 days as a condition of employment."

He testified also that every contract between Local 101 and other Great Lakes vessel companies contained a provision requiring all licensed engineers hired after a specified date to become members of the union within thirty days following their employment as a condition of continued employment. This provision was included in the contract [fol. 39] obtained from the Tomlinson Fleet after a strike and picketing which followed a secret ballot election (not conducted by the N.L.R.B.) in which the licensed engineers of that fleet voted against representation by MEBA Local 101.

The exception in Section 179.12, Subd. 3 of the Minnesota Statutes permitting union shop contracts applies only where such contracts are negotiated voluntarily between an employer and a bargaining agent selected in accordance with Section 179.16 of the Act, the very section from which supervisors are excluded.

Thus it is a fair and reasonable conclusion from the evidence in this case that an objective of the defendants was to coerce or compel plaintiffs to commit an unfair labor practice and an unlawful act as specified in Section 179.12, Subd. 3 of the Minnesota Labor Relations Act.

This objective of MEBA Local 101 is further unlawful in the light of the express declarations of Minnesota public policy contained in Minnesota Statutes, Sections 179.10 and 185.08. Irrespective of the United States Supreme Court decision in the 1940's on the question of the relationship between the right of free speech and picketing, it is now clear from decisions of that Court during the last several years that State Courts may constitutionally enjoin all picketing where it violates a declared public policy of the State. The Court is of the opinion that the cases of International Brotherhood of Teamsters, Local 605 v. Vogt, Inc., [fol. 40] 254 U. S. 284 (1957), and Pappas v. Stacey, 151 Maine 36, 116 A. 2d 497 (1955; appeal dismissed for lack of any substantial Federal question, 350 U. S. 870) are directly in point and should be applied in this case.

Although not cited by counsel, the Court also feels that the case of Building Service Employers International Union, Local 272 v. Gazzam, 339 U. S. 532 (1950) is especially applicable and in point. The United States Supreme

Court in that case affirmed a Washington State Court injunction against organizational picketing. The injunction was granted by the State of Washington Court on the ground that the picketing violated the public policy of the State as declared by the Legislature in its Anti-Injunction Act. The section of the Washington Act relied upon by the Washington Courts is identical with Sec. 185.08 of the Minnesota Anti-Injunction Act.

The Court is therefore of the opinion that the objectives of the defendants violated expressly declared public policies of this State and were therefore unlawful.

An even stronger situation is presented for injunctive relief in this case than in the cases cited above. The present case involves an effort to secure an election and collective bargaining rights for employees who are clearly supervisors. Sec. 14 (a) of the N.L.R.A. provides that no employer shall be compelled to deem individuals defined in the Act as supervisors as employees for the purpose of [fol. 41] any law, either national or local, relating to collective bargaining. Thus unions of supervisors have no right under either State or Federal law to secure State or Federally supervised elections or to compel their recognition as collective bargaining agents. The apparent purpose of this provision was to allow employers to decide voluntarily whether or not they would recognize and bargain with unions composed of supervisory employees. Permitting a supervisory union to compel recognition and to obtain collective bargaining rights by means of picketing and economic force and coercion would completely defeat the purpose and intent of the Federal Act.

The Court therefore feels that the cases of 260 Madison Avenue Corp. v. Nelson, 284 App. 254, 26 Labor Cases, paragraph 68, 464 (N.Y. Sup. Ct., App. Div., 1954) and Safeway Stores, Inc. v. Retail Clerks International Association, 41 Cal. 2d 567, 261 P. 2d 721 (1953), both of which enjoined all picketing designed to compel the employer to bargain collectively for supervisory employees, were correctly decided and state principles which are applicable in this case.

It is the further opinion of the Court that the Minnesota Anti-Injunction Act does not prevent the issuance of a

temporary injunction in this case. Certainly, acts which violate the policy of the State as declared in the Anti-Injunction Act itself (Sec. 185.08) cannot fall within the pro-[fol. 42] hibitions of that Act. Further, by the express terms of Sec. 179.14, the Anti-Injunction Act is made inapplicable to actions which would constitute unfair labor practices or unlawful acts as defined in the Minnesota Labor Relations Act.

The Bull Steamship Co. case is not in point in this connection since that case clearly involved a "labor dispute"—a conflict of terms and conditions of employment between an employer and a supervisory union which it had voluntarily recognized and contracted with as the bargaining agent for certain of its supervisory employees.

Defendants are not rendered helpless by the granting of this temporary injunction. The record discloses that there are considerable periods of time when defendants could contact engineers employed by plaintiffs including times in various ports when the engineers are off watch and consequently the majority of them go ashore and in addition, the engineers are seasonal workers and could be contacted during the off season as well. It is apparently also open to defendants to utilize the mails in an effort to acquaint such engineers with defendants' principles and policies.

The record discloses the existence of at least two organizations which seek to represent the licensed engineers employed by plaintiffs. If picketing for an unlawful purpose by defendants could not be enjoined and if as a result plaintiffs were coerced into making an agreement with defendants, plaintiffs might be subject to picketing by an-[fol. 43] other such organization despite the existence of an agreement with defendants.

The Supreme Court of Minnesota in Dayton Co. v. Carpet, Linoleum, et al. Union, 229 Minn. 87, 39 N. W. 2d 183 (1949), quoted with approval from the United States Supreme Court to the effect that "picketing cannot be used to compel an employer to coerce his employees to join a union contrary to existing law".

In Star v. Cooks, Waiters, et al. Union, 244 Minn. 558, 70 N. W. 2d 873 (1955), the Court held that in determining

whether peaceful picketing ought to be enjoined one of the substantial elements to be considered by the trial court is the objective sought by the picketing.

It was not the intention or purpose of the Minnesota Anti-Injunction Act to restrict the Courts from enjoining unlawful acts or acts, the objectives of which were contrary to the declared public policy of the State and therefore unlawful. In this connection, the case of 260 Madison Avenue Corp. v. Nelson, supra, is likewise applicable.

STATEMENT OF MR. HEANEY

Mr. Heaney: The Marine Engineers Beneficial Association is prepared to stipulate that it represents the licensed engineers on approximately 90% of all of the merchant vessels in the United States fleet and that it represents the licensed engineers on approximately 40 to 45% of the merchant fleet on the Great Lakes. It is further prepared to [fol. 44] stipulate that the purpose of picketing the defendant in this case—excuse me, the plaintiff in this case—was to improve the wages, hours and working conditions of the licensed engineers of the plaintiff company as well as the wages, hours and working conditions of the licensed engineers of other companies on the Great Lakes and on the high seas; and that, more specifically, its purpose was to secure—well strike that. And that in furtherance of this policy that its purpose was to obtain from the defendant the type of agreement or understanding that it has obtained from other companies on the Great Lakes under similar circumstances; the type of understanding that has been obtained elsewhere, and that the defendant Marine Engineers Beneficial Association would feel appropriate in this case and would feel would serve the purpose of improving the wages, hours and working conditions of the engineers which is, number 1: That representatives of the Marine Engineers Beneficial Association be given permission to go aboard the vessels of the defendant—of the plaintiff, rather, excuse me—at such reasonable times and places as may be agreed to between the parties, and secondly: to secure an understanding from the company that on request from the Marine Engineers Beneficial Association, within such rea-

sonable time as may be established by the parties and on such a showing as may be agreed to by the parties, that the plaintiff would agree that an election could be held among [fol. 45] the licensed engineers of the company for the purpose of determining whether or not the employees voluntarily and freely, of their own will, in a secret ballot desire to be represented by this association with the understanding being, of course, that if such an election is held and if the employees indicate that they do not desire to be represented by the Marine Engineers Beneficial Association that no further efforts would be made in this action for such reasonable period of time as might be agreed to between the parties.

We also wish to state that it is the feeling of the Marine Engineers Beneficial Association that such election should be conducted by an impartial body such as the American Arbitration Association, and that the ballot be a secret ballot.

I believe, your Honor, that we are willing to stipulate that the National Labor Relations Board would not accept jurisdiction insofar as we seek to represent supervisory employees, and most of the engineers are supervisory employees. By making this statement, I reserve, without going into detail on their arguments of yesterday as to whether or not the National Labor Relations Board may have jurisdiction for purposes of determining whether or not an unfair labor practice has been committed by this group, because it is our position that the National Labor Relations Board has held that we are a labor organization, but we agree that insofar as we seek to represent supervisory employees that the Board will not conduct an elec- [fol. 46] tion, and it is our feeling that those few employees who are still not members of an association or organization or union, or whatever you characterize it as, should have the opportunity to belong to such a group.

I also want to state that the purpose of the picketing was not in any way to compel or, either by economic pressure or any other kind of pressure, the employees either of the particular boat that has been picketed or any other boat of the company to become members of this union, nor was the purpose in any way to get the company to sign an agree-

ment with us recognizing us as the bargaining agent of the Marine Engineers, unless the Marine Engineers voluntarily agreed that they desired that this be done, and that our only purpose was as outlined in the forepart of this statement.

IN DISTRICT COURT OF ST. LOUIS COUNTY

WRIT OF INJUNCTION—December 2, 1959

Whereas, the above named plaintiffs Interlake Steamship Company, a corporation, and Pickands Mather & Co., a copartnership, have served and filed in the District Court of St. Louis County, a complaint praying, among other things, that you, Marine Engineers Beneficial Association, [fol. 47] Charles Laporte, Fred L. Beatty, John Doe and Richard Roe, and all persons acting under you, be enjoined during the pendency of the above entitled action from doing the acts hereinafter in this Writ prohibited, and whereas, it appears to the satisfaction of the above named Court from the said complaint and proofs duly submitted in support thereof, that sufficient grounds exist therefor; and whereas, said plaintiffs have given the necessary and proper undertaking in lieu of bond duly approved by said Court.

Now, therefore, in consideration of the premises and pursuant to the Order of the above named Court, you, Marine Engineers Beneficial Association, Charles Laporte, Fred L. Beatty, John Doe and Richard Roe, and each of you, and all persons acting in aid of or in conjunction or in concert with you, are strictly commanded that you and all persons acting in aid of or in conjunction or in concert with you, do absolutely refrain and desist, until final judgment in the above entitled action, or until further Order of the Court, from:

1. Picketing in any manner, peaceful or otherwise, at or in the vicinity of any of plaintiffs' vessels in the Duluth harbor, including the vessel Samuel Mather, and the dock operated by Carnegie Dock & Fuel Company at 600 Garfield Avenue, Duluth, Minnesota, and

any other dock or similar company at or near which any of plaintiffs' vessels are moored for the purposes of loading or unloading.

[fol. 48] 2. Interfering in any way with any of plaintiffs' employees in connection with ingress or egress to or from any of plaintiffs' vessels in the Duluth harbor including the vessel Samuel Mather.

3. Interfering in any way with the performance of services by the employees of Carnegie Dock & Fuel Company, and any other dock or similar company at or near which any of plaintiffs' vessels are moored for the purposes of loading or unloading.

4. Loitering, grouping or congregating at or near any of plaintiffs' vessels in the Duluth harbor including the vessel Samuel Mather, or at or in the vicinity of the dock operated by Carnegie Dock & Fuel Company, and any other dock or similar company at or near which any of plaintiffs' vessels are moored for the purposes of loading or unloading, or at or near any entrances or exists to or from any of said docks.

5. Creating any disorder in, at or near any of plaintiffs' vessels in the Duluth harbor, including the vessel Samuel Mather, and from threatening, coercing, intimidating, molesting or interfering with any of plaintiffs' officers, agents, and employees and others having business with plaintiffs at or on any of its vessels in said harbor, including the vessel Samuel Mather.

[fol. 49] 6. Committing any acts of force, violence, intimidation or coercion in, at or near any of plaintiffs' vessels in the Duluth harbor, including the vessel Samuel Mather, or at any place against any of plaintiffs' officers, agents, representatives and employees.

7. Ordering, inducing, intimidating, coercing, or attempting to order, induce, intimidate or coerce any of plaintiffs' employees with the intent or effect of causing them to fail or refuse to perform any services for plaintiffs.

8. Ordering, inducing, intimidating, coercing or attempting to order, induce, intimidate or coerce any person, firm or corporation or the employees of any person, firm or corporation or any other labor organization or the members of any other labor organization with the intent or effect of causing them to fail or refuse to perform any services in connection with the loading or unloading of any of plaintiffs' vessels.

9. Conspiring or continuing to conspire or act in concert in combination with each other or with any other individual, person, labor organization, firm or corporation whatsoever to carry on, perform, or do any of the actions hereinbefore in this Order prohibited.

10. Advising, protecting, aiding, assisting or abetting any person or persons in the commission of any [fol. 50] of the acts hereinbefore prohibited.

and this injunction you will observe under penalty of the law.

Witness, the Honorable Mark Nolan, Judge of the District Court aforesaid, and the seal of said Court hereto affixed at Duluth, Minnesota, the 2nd day of December, 1959.

Fred Ash, Clerk of the District Court.

(Seal)

[fol. 56]

IN DISTRICT COURT OF ST. LOUIS COUNTY

ORDER AMENDING FINDINGS OF FACT AND TEMPORARY INJUNCTION—March 16, 1960

On December 1, 1959 this Court issued Findings of Fact, Conclusions of Law and Order for Temporary Injunction and pursuant to the Order for Temporary Injunction the Clerk of this Court on December 2, 1959 issued a Writ of Injunction.

Defendants thereafter moved the Court to amend said Findings of Fact and Conclusions of Law, and this motion came on for hearing before the Court on December 18, 1959 with Lewis, Hammer, Heaney, Weyl & Halverson, by William D. Watters appearing for defendants in support of said motion and Baker, Hostetler & Patterson, by Charles D. Johnson and Nye, Montague, Sullivan & McMillan by Edward T. Fride appearing for plaintiffs in opposition thereto. The Court having considered the arguments of counsel, the briefs of the parties and all of the files and proceedings herein and being fully advised in the premises,

It is ordered that said Findings of Fact, Conclusions of Law and Order for Temporary Injunction issued December 1, 1959 be amended to provide as follows and that the motion of defendants be and hereby is denied in all other respects:

[fol. 57]

IN DISTRICT COURT OF ST. LOUIS COUNTY

FINDINGS OF FACT—March 16, 1960

1. Plaintiff Interlake Steamship Company, a Delaware corporation (hereinafter referred to as "Interlake"), and plaintiff Pickands Mather & Co., a copartnership having its principal office and place of business at Cleveland, Ohio, are respectively the owner and operating agent of a fleet of Great Lakes bulk cargo vessels which transports coal, iron ore and other materials between numerous Great Lakes ports in the United States and Canada, including Duluth, Minnesota.

2. Defendant Marine Engineers Beneficial Association Local 101, (hereinafter referred to as "MEBA") is a voluntary unincorporated association which admits to membership licensed marine engineers employed on commercial vessels on the Great Lakes.

3. Defendant Charles LaPorte is an agent and business representative of defendant MEBA Local 101, and

his duties include the direction of said defendant's activities in Duluth, Minnesota.

4. On November 11, 1959, the Interlake vessel Samuel Mather arrived at the dock of the Carnegie Dock & Fuel Company at Duluth, Minnesota, with a cargo of coal to be unloaded at said dock. The unloading of the vessel by the employees of the Carnegie Dock & Fuel Company, which would ordinarily require about 14 hours, commenced shortly after its arrival.

[fol. 58] 5. At approximately 6:30 a.m. November 12, 1959, five or six individuals commenced picketing the single private road entrance to the dock and walked back and forth across that road. Two of these individuals carried signs which read:

> "Pickands Mather Unfair to Organized Labor. This Dispute Only Involves P-M. M.E.B.A. Loc. 101 AFL-CIO."

Two of these individuals carried signs which read:

> "M.E.B.A. Loc. 101. AFL-CIO. Request P-M Engineers to Join with Organized Labor to Better Working Conditions. This Dispute Only Involves P-M."

6. From the time of the commencement of this picketing, the employees of the Carnegie Dock & Fuel Company, although having entered the premises of their employer despite such picketing and having performed other duties of their employment, have failed and refused to perform any services whatsoever in connection with the unloading of the Samuel Mather although ordered to do so on numerous occasions.

7. As a further result of such picketing, certain independent truck drivers failed and refused to enter the dock premises to take delivery of coal from the dock company and left their vehicles parked on the single road entrance to the dock for approximately two hours on the morning of November 12, 1959. Said drivers thereafter [fol. 59] went through the picket line and took delivery of coal from the dock.

8. Defendant Charles LaPorte stated at or near the picket line on the morning of November 12, 1959, that it was the intention of MEBA Local 101 to picket Interlake vessels wherever it could locate them in the Duluth Minnesota harbor.

9. The picketing at the dock company premises continued until the service of the temporary restraining order issued by this Court in the afternoon of November 12, 1959. Despite the absence of formal picketing at the dock company's premises since that time, the dock company employees have continued to refuse to unload the Samuel Mather.

10. The Carnegie Dock & Fuel Company dock at Duluth Minnesota, has facilities for the unloading of only one vessel at a time. The Interlake vessel Pickands, also loaded with coal for the same dock, arrived at Duluth, Minnesota, the morning of November 15, 1959, and has been anchored outside the harbor ever since that date pending the unloading of the Samuel Mather.

11. At approximately 10:55 p.m., November 12, 1959, four or five individuals appeared at the entrance to the Duluth Minnesota plant of Interlake Iron Corporation and walked across the entrance in a circle carrying signs bear-[fol. 60] ing the legends set forth in paragraph 5 hereof. At that time, the Interlake vessel Mills was unloading a cargo of coal for use at the Interlake Iron plant at the plant dock approximately 3,000 feet from the place of such picketing. The picketing at the entrance to the Interlake Iron Corporation plant ceased approximately one hour later upon the service of the temporary restraining order upon the pickets. None of the employees of Interlake Iron Corporation ceased performing any services during such temporary picketing.

12. Prior to the commencement of the picketing as described above on November 12, 1959, there had been no contact whatsoever between plaintiffs and defendants, nor had defendant MEBA Local 101, or anyone acting for or on its behalf, made any demand or request whatsoever, either written or oral, of plaintiffs or either of them. Plain-

tiffs have a uniform policy applicable to all their vessels which prohibits all persons other than employees, their wives, authorized inspectors and suppliers from coming onto any of its vessels at any time for any purpose.

13. All engineers and assistant engineers employed on Interlake vessels stand watches during which they are in charge of and responsible for the operation and condition of the vessel's propulsion mechanism and responsibly direct, control and supervise the work of the firemen, oilers and coal passers on duty during such watch; they hire, fire, transfer and change the status of and discipline the [fol. 61] persons working under them and have authority to and do make effective recommendations respecting the employment and tenure of employment of the people working under them; they handle initially grievances of the employees who are subject to their supervision; the exercise of authority by the engineers and assistant engineers requires the use of independent judgment and discretion; and all such engineers are required to be licensed by the United States Coast Guard.

14. The acts of the defendants specified herein have caused and are causing serious economic and monetary loss and irreparable damage to the plaintiffs by preventing the unloading and subsequent loading of the Steamers Mather and Pickands at a loss of $6,000 a day exclusive of profit and if defendants' threats to picket all Interlake vessels coming into the Duluth harbor were carried out, such would result in interference with the majority of plaintiffs' vessels.

15. The further purpose and objective of the picketing and activities of MEBA Local 101, hereinabove described is to secure from plaintiffs the same type of agreement or understanding which it has obtained from other employers operating bulk cargo vessels on the Great Lakes. Every agreement or understanding between said defendant and other Great Lakes vessel companies includes a [fol. 62] provision requiring every licensed engineer hired after a specified date to become a member of said defendant organization within thirty days from the date of his employment as a condition of continued employment.

16. The further purpose and objective of defendants' picketing and activities as described above was to coerce and induce plaintiffs to force, compel or induce engineers employed on Interlake vessels to become members of MEBA Local 101 and was for the purpose of injuring plaintiffs in their business because of their refusal to in any way interfere with the rights of engineers employed on Interlake vessels to join or not to join said defendant organization.

17. The further purpose and objective of defendants' picketing and activities as described above was to coerce and intimidate plaintiffs in order to secure recognition from plaintiffs of MEBA Local 101 as the collective bargaining agent for the licensed engineers employed on Interlake vessels.

18. MEBA and MEBA Local 101 have consistently contended and taken the position in all proceedings involving them, or either of them, before the Federal Courts and before the National Labor Relations Board that neither such Courts nor the Board have any jurisdiction over them because they are not "labor organizations" within the meaning of the National Labor Relations Act, as amended.

[fol. 63] 19. There is no claim that defendant Marine Engineers Beneficial Association and defendant Local 101 represent a majority of the licensed engineers employed by plaintiffs, nor are such organizations the authorized collective bargaining representative of said engineers.

20. The activities of defendants above described constitute compulsion to plaintiffs to commit an unfair labor practice within the meaning of Minnesota Statutes 179.12 and constitute a violation of Minnesota Statutes 179.12 (3).

21. The activities of the defendants above described do not constitute a violation of Minnesota Statutes 179.11.

22. The activities of defendants did not include the use of violence or threats of violence.

23. The policy of the State of Minnesota protects the freedom of employees to decline to associate with his fel-

lows and assures freedom of association, self-organization and designation of representatives of his own choosing free from the interference, restraint or coercion of employers.

24. The activities of defendants above described are in violation of the public policy of Minnesota as declared by the statutes and the Supreme Court.

[fol. 64]

IN DISTRICT COURT OF ST. LOUIS COUNTY

CONCLUSIONS OF LAW—March 16, 1960

1. This case does not involve any "labor organization" within the meaning of the National Labor Relations Act, as amended.

2. All of the engineers and assistant engineers employed on all Interlake vessels are "supervisors" within the meaning of that term as defined in the National Labor Relations Act, as amended.

3. This Court has jurisdiction of this action since no "labor organization" subject to the jurisdiction of the National Labor Relations Board is involved in this case and since organizational activities of an organization attempting to secure collective bargaining rights for supervisory employees are excluded from the jurisdiction of the National Labor Relations Board and do not constitute protected activities under the National Labor Relations Act, as amended.

4. In attempting to require plaintiffs to recognize MEBA Local 101 as the collective bargaining agent for certain of plaintiffs' supervisory employees, defendants are seeking an unlawful objective contrary to the State and Federal policies as declared by the Minnesota Legislature and Minnesota Courts and as declared by Congress in Section 14 (a) of the National Labor Relations Act, as amended.

[fol. 65] 5. The provisions of the Minnesota Labor Relations Act (Minn. Stats. Sections 179.01 et seq.), except for the provisions of Sec. 179.16, apply to the defendants in-

as much as supervisors are not excluded from the definition of the term "employee" contained in said Act and organizations of supervisors are not excluded from the definition of the term "labor organization" contained in said Act.

6. The picketing and other acts of the defendants as described herein for the purposes stated herein are intended to require or compel the plaintiffs to commit an unfair labor practice within the meaning of Minn. Stats. Sec. 179.12, Subd. 3, particularly in the light of the public policy of the State of Minnesota as declared in Minn. Stats. Sections 179.10 and 185.08, and therefore represent unlawful acts.

7. The acts of the defendants in seeking to require plaintiffs to compel, coerce, or require licensed engineers employed on Interlake vessels to become members of MEBA Local 101 irrespective of their wishes, represent violations of the public policy of the State of Minnesota as declared in Minn. Stats. Sec. 185.08, and therefore represent an unlawful objective.

8. Plaintiffs are threatened with irreparable injury and damage by defendants' picketing and other activities and plaintiffs have no adequate remedy at law.

[fol. 66] 9. The Minnesota Anti-Injunction Act does not apply to this proceeding and does not prevent the issuance of a temporary injunction against the activities of the defendants in seeking unlawful objectives in violation of the expressly declared policy of both State and Federal Statutes, especially the policy of the State of Minnesota as declared in Sec. 185.08 of the Anti-Injunction Act; Minnesota Statute 179.14 specifically excepts the Anti-Injunction Act from applicability where a violation of 179.12 is found; in any event the record in this proceeding discloses the existence, or the inapplicability, of each condition to the granting of injunctive relief specified in Minn. Stats. Sec. 185.13.

IN DISTRICT COURT OF ST. LOUIS COUNTY

ORDER FOR TEMPORARY INJUNCTION—March 16, 1960

It is ordered, that the bond heretofore filed by plaintiffs continue in effect and that the Writ of Injunction heretofore issued under date of December 2, 1959 remain in full force and effect except as modified by the following Order and that the Clerk is authorized to issue a temporary injunction commanding defendants, and each of them, and all persons acting in aid or in conjunction or in concert with them, to refrain from:

1. Picketing in any manner, peaceful or otherwise, at or in the vicinity of any of plaintiffs' vessels in the Duluth harbor, including the vessel Samuel Mather, and the dock operated by Carnegie Dock & Fuel Com- [fol. 67] pany at 600 Garfield Avenue, Duluth, Minnesota, and any other dock or similar company at or near which any of plaintiffs' vessels are moored for the purposes of loading or unloading.

2. Interfering in any way with any of plaintiffs' employees in connection with ingress or egress to or from any of plaintiffs' vessels in the Duluth harbor including the vessel Samuel Mather.

3. Interfering in any way with the performance of services by the employees of Carnegie Dock & Fuel Company, and any other dock or similar company at or near which any of plaintiffs' vessels are moored for the purposes of loading or unloading.

4. Loitering, grouping or congregating at or near any of plaintiffs' vessels in the Duluth harbor including the vessel Samuel Mather, or at or in the vicinity of the dock operated by Carnegie Dock & Fuel Company, and any other dock or similar company at or near which any of plaintiffs' vessels are moored for the purposes of loading or unloading, or at or near any entrances or exits to or from any of said docks.

5. Threatening, coercing, intimidating, molesting or interfering with any of plaintiffs' officers, agents, and

employees and others having business with plaintiffs [fol. 68] at or on any of its vessels in said harbor, including the vessel Samuel Mather.

6. Ordering, inducing, intimidating, coercing or attempting to order, induce, intimidate or coerce any person, firm or corporation or the employees of any person, firm or corporation or any other labor organization or the members of any other labor organization with the intent or effect of causing them to fail or refuse to perform any services in connection with the loading or unloading of any of plaintiffs' vessels.

7. Conspiring or continuing to conspire or act in concert in combination with each other or with any other individual, person, labor organization, firm or corporation whatsoever to carry on, perform, or do any of the actions hereinbefore in this order prohibited.

8. Advising, protecting, aiding, assisting or abetting any person or persons in the commission of any of the acts hereinbefore prohibited.

until final judgment herein or until further order of the Court.

Dated this 16th day of March, 1960.

By the Court: Mark Nolan, Judge.

[fol. 69]

IN DISTRICT COURT OF ST. LOUIS COUNTY

MEMORANDUM—March 16, 1960

This Court attached a Memorandum to its Order of December 1, 1959 and it is felt that this Memorandum states the legal basis upon which said Order was issued and the same is adopted here by reference. Following the hearing on defendants' motion to amend the Findings, the Court has made some changes in the Findings of Fact and the terminology of the injunction but has not altered the basis for granting the temporary injunction in the first instance and there is no intention to change its substance.

At the time the Findings of Fact and the remainder of the order was prepared, the attorneys for the plaintiffs were instructed to draw the order and were told specifically by the Court what to put into the order. The reason for this, of course, was because at that time I, as Judge, was sandwiched between the special term of Court at Duluth and the opening of the jury term at Virginia. Because of the statutory provisions, all these questions had to be determined and settled very quickly. Consequently, this resulted in some inaccuracies in the statement of facts. I believe that these have been corrected in the amended order.

This Court regrets that on both occasions when the temporary restraining order, the temporary injunction and the motion for amended findings were made, that this Court, [fol. 70] because of the pressure of other duties, was not permitted at any time to give the complete attention to this case which it deserved. This does not mean that my Findings of Fact and Conclusions of Law and injunctive relief, as finally determined, were arrived at without profound and deep consideration, but it does suggest that in matters as weighty as these that it is regrettable that the Court is not able to push aside all other business and concentrate on the matters at hand.

IN DISTRICT COURT OF ST. LOUIS COUNTY

WRIT OF INJUNCTION—March 16, 1960

Whereas, a Writ of Injunction was issued on December 2, 1959 pursuant to the Court's Order of December 1, 1959, and whereas, the Court has now issued an Order amending Findings of Fact, Conclusions of Law and Order for Temporary Injunction on the 16th day of March, 1960, and whereas, plaintiffs have given the necessary and proper undertaking in lieu of bond duly approved by said Court,

Now, therefore, in consideration of the premises and pursuant to the Order of the above named Court, you, Marine Engineers Beneficial Association, Charles LaPorte, Fred L. Beatty, John Doe and Richard Roe, and each of you, and all persons acting in aid of or in conjunction or in

concert with you, are strictly commanded that you and all [fol. 71] persons acting in aid of or in conjunction or in concert with you, do absolutely refrain and desist, until final judgment in the above entitled action, or until further Order of the Court, from:

1. Picketing in any manner, peaceful or otherwise, at or in the vicinity of any of plaintiffs' vessels in the Duluth harbor, including the vessel Samuel Mather, and the dock operated by Carnegie Dock & Fuel Company at 600 Garfield Avenue, Duluth, Minnesota and any other dock or similar company at or near which any of plaintiffs' vessels are moored for the purposes of loading or unloading.

2. Interfering in any way with any of plaintiffs' employees in connection with ingress or egress to or from any of plaintiffs' vessels in the Duluth harbor including the vessel Samuel Mather.

3. Interfering in any way with the performance of services by the employees of Carnegie Dock & Fuel Company, and any other dock or similar company at or near which any of plaintiffs' vessels are moored for the purposes of loading or unloading.

4. Loitering, grouping or congregating at or near any of plaintiffs' vessels in the Duluth harbor including the vessel Samuel Mather, or at or in the vicinity of [fol. 72] the dock operated by Carnegie Dock & Fuel Company, and any other dock or similar company at or near which any of plaintiffs' vessels are moored for the purposes of loading or unloading, or at or near any entrances or exits to or from any of said docks.

5. Threatening, coercing, intimidating, molesting or interfering with any of plaintiffs' officers, agents, and employees and others having business with plaintiffs at or on any of its vessels in said harbor, including the vessel Samuel Mather.

6. Ordering, inducing, intimidating, coercing or attempting to order, induce, intimidate or coerce any person, firm or corporation or the employees of any

person, firm or corporation or any other labor organization or the members of any other labor organization with the intent or effect of causing them to fail or refuse to perform any services in connection with the loading or unloading of any of plaintiffs' vessels.

7. Conspiring or continuing to conspire or act in concert in combination with each other or with any other individual, person, labor organization, firm or corporation whatsoever to carry on, perform, or do any of the actions hereinbefore in this Order prohibited.

[fol. 73] 8. Advising, protecting, aiding, assisting or abetting any person or persons in the commission of any of the acts hereinbefore prohibited.

and this Injunction you will observe under penalty of the law.

Witness, the Honorable Mark Nolan, Judge of the District Court aforesaid, and the seal of said Court hereto affixed at Duluth, Minnesota, the 16th day of March, 1960.

Fred Ash, Clerk of the District Court.

(Seal)

IN DISTRICT COURT OF ST. LOUIS COUNTY

STIPULATION AS TO RECORD

It is hereby stipulated and agreed, by and between the above named parties, through their respective attorneys, that the above entitled matter is hereby submitted to the Court on the basis of the present record, files and proceedings herein without any further testimony or hearings, for the purpose of the Court making a final order for judgment.

[fol. 74] Dated at Duluth, Minnesota, this 28th day of March, 1960.

Baker, Hostetler & Patterson, Union Commerce Building, Cleveland 14, Ohio; Nye, Montague, Sullivan & McMillan, By E. T. Fride, 1200 Alworth Building, Duluth 2, Minnesota, Attorneys for Plaintiffs.

Lee Pressman, 50 Broadway, New York, N. Y.; Lewis, Hammer, Heaney, Weyl & Halverson, By Gerald W. Heaney, 700 Providence Building, Duluth 2, Minnesota, Attorneys for Defendants.

IN DISTRICT COURT OF ST. LOUIS COUNTY

ORDER ON STIPULATION RE INJUNCTION—March 28, 1960

Based on the above Stipulation and on all of the records, files and proceedings herein, it is hereby ordered that the Writ of Temporary Injunction heretofore issued by the Clerk of this Court on March 16, 1960 is hereby made a Writ of Permanent Injunction and the Clerk is instructed [fol. 75] to issue a Writ of Permanent Injunction in the same terms as those contained in the Writ of Temporary Injunction issued on March 16, 1960. The Court adopts by reference all of the amended Findings of Fact and Conclusions of Law issued by Order dated March 16, 1960, the Memorandum attached to said Order of March 16, 1960 and the Memorandum attached to the Court's Order of December 1, 1959 as fully as if said Order and Memorandums were expressly set forth hereafter.

It is further ordered that the bond heretofore filed by plaintiffs continue in effect during such period as the Permanent Injunction is in effect.

Dated this 28th day of March, 1960.

By the Court: Mark Nolan, Judge.

IN DISTRICT COURT OF ST. LOUIS COUNTY

WRIT OF PERMANENT INJUNCTION—March 28, 1960

The State of Minnesota, to the above named defendants Marine Engineers Beneficial Association, Charles LaPorte, Fred L. Beatty, John Doe and Richard Roe:

Whereas, a Writ of Temporary Injunction was issued by the undersigned on March 16, 1960, and whereas, the Court

[fol. 76] has now issued an Order on the 28th day of March, 1960 directing the undersigned to issue a Writ of Permanent Injunction.

Now, therefore, in consideration of the premises and pursuant to the Order of the above named Court you, Marine Engineers Beneficial Association, Charles LaPorte, Fred L. Beatty, John Doe and Richard Roe, and each of you, and all persons acting in aid of or in conjunction or in concert with you, are strictly commanded that you and all persons acting in aid of or in conjunction or in concert with you, absolutely refrain and desist perpetually from:

1. Picketing in any manner, peaceful or otherwise, at or in the vicinity of any of plaintiffs' vessels in the Duluth harbor, including the vessel Samuel Mather, and the dock operated by Carnegie Dock & Fuel Company at 600 Garfield Avenue, Duluth, Minnesota, and any other dock or similar company at or near which any of plaintiffs' vessels are moored for the purposes of loading or unloading.

2. Interfering in any way with any of plaintiffs' employees in connection with ingress or egress to or from any of plaintiffs' vessels in the Duluth harbor including the vessel Samuel Mather.

3. Interfering in any way with the performance of services by the employees of Carnegie Dock & Fuel Company, and any other dock or similar company at [fol. 77] or near which any of plaintiffs' vessels are moored for the purposes of loading or unloading.

4. Loitering, grouping or congregating at or near any of plaintiffs' vessels in the Duluth harbor including the vessel Samuel Mather, or at or in the vicinity of the dock operated by Carnegie Dock & Fuel Company, and any other dock or similar company at or near which any of plaintiffs' vessels are moored for the purposes of loading or unloading, or at or near any entrances or exits to or from any of said docks.

5. Threatening, coercing, intimidating, molesting or interfering with any of plaintiffs' officers, agents, and employees and others having business with plaintiffs at or on any of its vessels in said harbor, including the vessel Samuel Mather.

6. Ordering, inducing, intimidating, coercing or attempting to order, induce, intimidate or coerce any person, firm or corporation or the employees of any person, firm or corporation or any other labor organization or the members of any other labor organization with the intent or effect of causing them to fail or refuse to perform any services in connection with the loading or unloading of any of plaintiffs' vessels.

[fol. 78] 7. Conspiring or continuing to conspire or act in concert in combination with each other or with any other individual, person, labor organization, firm or corporation whatsoever to carry on, perform, or do any of the actions hereinbefore in this Order prohibited.

8. Advising, protecting, aiding, assisting or abetting any person or persons in the commission of any of the acts hereinbefore prohibited.

and this Injunction you will observe under penalty of the law.

Witness, the Honorable Mark Nolan, Judge of the District Court aforesaid, and the seal of said Court hereto affixed at Duluth, Minnesota, the 28th day of March, 1960.

Fred Ash, Clerk of the District Court.

[fol. 79]

IN DISTRICT COURT OF ST. LOUIS COUNTY

AFFIDAVIT OF HERBERT L. DAGGETT

Mr. Fride: "State of New York, County of New York, Herbert L. Daggett, being duly sworn, deposes and says, paragraph 1: I am the president of the National Marine Engineers Beneficial Association, AFL-CIO, hereinafter re-

ferred to as the MEBA, one of the defendants herein, and make this affidavit in opposition to the motion of the plaintiff for a temporary injunction, and in support of MEBA's cross motion to dismiss the complaint. Paragraph 2: As president, I am the chief executive officer of the MEBA. I have occupied such office since 1949, as a result of successive elections by the entire national membership of MEBA. Prior to 1949, I was, for several years, the business manager of subordinate association No. 38 of MEBA, one of the locals of MEBA, with jurisdiction in Seattle, Washington. Paragraph 3: The MEBA is a national labor union, composed of many subordinate associations, whose members are licensed marine engineers."

I am skipping now to paragraph 10 in the same affidavit. "Paragraph 10: As former business manager of the sub- [fol. 80] ordinate association No. 38 of MEBA in Seattle, and as president of the MEBA, I am fully acquainted with the type of membership within the MEBA. Further, I hold a license as a chief marine engineer. Prior to my becoming an official of the local and the national organization, I sailed under my license for many years. As such, I am fully acquainted with the type of work performed by marine engineers who fall within the jurisdiction of the MEBA. I can state most categorically that licensed marine engineers who comprise the entire members of MEBA, without a single exception in the nature of their work, have authority in the interests of the employer for whom they may be working to hire, transfer, suspend, lay off, recall, promote, discharge, fine, reward or discipline the unlicensed personnel who work in the engine department, over which the licensed engineers have supervision or responsibility to direct such unlicensed personnel in the engine department or adjust the grievances of the unlicensed personnel in the engine department, or to effectively recommend any such action. In furtherance of their duties, licensed engineers do not exercise the authority just described merely as a routine or clerical nature, but they must exercise the use of independent judgment. Every single member of MEBA performs work of the nature which I have just described. The type of marine personnel over whom the MEBA assumes jurisdiction and takes in

as members, is precisely that which I have just described. [fol. 81] We do not have any members who do not fall within such description, insofar as their duties and responsibilities are concerned. It is undoubtedly true with respect to the licensed marine officers employed by the plaintiff that they exercise precisely the duties and responsibilities and the nature of their work is exactly as I have above described them." And that is signed, under oath, by Herbert L. Daggett, October 9, 1957, as the president of the MEBA.

• • • • • • •

[fol. 82] [File endorsement omitted]

IN THE SUPREME COURT OF MINNESOTA
ST. LOUIS COUNTY

No. 9

38110

INTERLAKE STEAMSHIP COMPANY and
PICKANDS-MATHER & COMPANY, Respondents,

vs.

MARINE ENGINEERS BENEFICIAL ASSOCIATION, et al.,
Appellants.

SYLLABUS

1. Exclusion of supervisory employees from Federal Labor Management Relations Act of 1947 left field open for state regulation, and state courts have jurisdiction, under proper facts, to enjoin labor organization from committing an act unlawful under state labor law.

2. In determining purpose of picketing in a labor case, a trial court may draw reasonable inferences from evidence the same as in any other field of litigation.

3. Where the purpose of picketing is to coerce or compel an employer to commit an unlawful act, the picketing itself becomes unlawful.

4. Minnesota Anti-Injunction Act, Minn. St. c. 185, does not prohibit the issuance of an injunction to restrain the commission of an unlawful act.

Affirmed.

OPINION—March 30, 1961

KNUTSON, Justice.

This is an appeal from an order of the district court granting a permanent injunction restraining defendants from picketing under the facts of this case.

[fol. 83] Plaintiffs, Interlake Steamship Company and Pickands-Mather & Company, are the owners and operators of the second largest bulk cargo fleet of ships on the Great Lakes. For the most part, its ships transport bulk cargoes of coal and iron ore between Great Lakes ports in the United States and Canada.

Defendant Marine Engineers Beneficial Association, Local 101, referred to hereinafter as MEBA, is a voluntary unincorporated association which admits to membership licensed engineers employed on commercial vessels on the Great Lakes and the oceans.

Defendant Charles LaPorte is an agent and business representative of MEBA. His duties include the direction of the activities of MEBA in Duluth, Minnesota.

On November 11, 1959, Interlake's vessel, *Samuel Mather*, arrived at the dock of the Carnegie Dock & Fuel Company at Duluth, Minnesota, to unload a cargo of coal. The unloading of the vessel by the employees of Carnegie Dock & Fuel Company commenced shortly after the ship had docked. In the normal course of events the ship would have been unloaded in about 34 hours.

Early in the morning of November 12, 1959, five or six men began picketing the single private road entrance to the dock, walking in a tight circle across the road. Some of the men carried signs which read:

"Pickands-Mather Unfair To Organized Labor
This Dispute Only Involves Pickands-Mather M.E.B.A.
Loc. 101 A.F.L.-C.I.O."

Others carried signs which read:

"M.E.B.A. Loc. 101 AFL-CIO Requests
P. M. Engineers To Join with Organized Labor
to Better Working Conditions
This Dispute Only Involves Pickands-Mather"

[fol. 84] After the picketing of this road began, dockworkers employed by Carnegie Dock & Fuel Company refused to proceed with the unloading of the vessel. Later the same day, the District Court of St. Louis County issued a temporary restraining order prohibiting such picketing, but the dockworkers still refused to unload the cargo. As a further result of the picketing, certain independent truckdrivers refused to enter the premises and take delivery of coal for 2 hours.

Defendant Charles LaPorte, who identified himself on November 12, 1959, as business agent of MEBA, Local 101, stated that it was the intention of the union to picket all Pickands-Mather ships coming into the harbor.

On November 15, 1959, while the *Samuel Mather* remained partially unloaded at the dock, Interlake's vessel, *Pickands*, arrived in the Duluth harbor with another load of coal destined for unloading at the same dock. Since the dock could handle only one ship at a time, the *Pickands* had to remain anchored in the harbor for a number of days.

On the night of November 12, 1959, four or five pickets with signs identifying them with MEBA appeared at the entrance to the Duluth plant of the Interlake Iron Corporation and moved around continuously across the plant entrance. At that time there was no dispute between Interlake Iron Corporation and its employees, and none of its employees were on the picket line.

Each Interlake vessel has a chief engineer and three assistant engineers, all of whom are licensed by the coast guard. Plaintiffs' evidence sought to show that all Interlake engineers and assistant engineers are supervisory

employees. Defendants introduced no evidence on this point but admitted that all of the engineers and assistant engineers aboard the *Mather* were supervisors.

Plaintiffs had no dispute of any kind with the employees on the Interlake fleet at the time of the picketing, and prior [fol. 85] to the picketing there had never been any negotiations between plaintiffs and defendants nor had defendants ever made any request of the plaintiffs for leave to board its ships. Interlake had an established policy to prohibit any unauthorized person from boarding its ships. Request had never been made of any Interlake official for permission to board such ships, but the right to do so was refused by the person who was on watch at the ship at the time in accordance with the rules of Interlake forbidding any unauthorized person to go aboard.

Plaintiffs' representatives and Interlake's chief executive officers knew of no MEBA members in the fleet. Defendants claim that it did have some such engineers as members but refused to disclose the names thereof. The trial court found that all of the engineers and assistant engineers employed on plaintiffs' vessels are supervisors within the meaning of the National Labor Relations Act.

Picketing which prevented the unloading of the vessels caused financial loss to plaintiffs amounting to about $6,000 per day, not including any profit.

A hearing was held on November 18, 1959, after which a temporary injunction was granted, and a permanent injunction was subsequently ordered on March 28, 1960.

It is the contention of defendants (1) that the state court lacks jurisdiction over the subject matter of the action; and (2) that if the state court does have jurisdiction the injunction should nevertheless have been denied.

1. Defendants first contend that the state court lacks jurisdiction to enjoin picketing for organizational or recognition purposes but that such jurisdiction rests exclusively with the National Labor Relations Board. To support this contention, they rely on Norris Grain Co. v. Seafarers' International Union, 232 Minn. 91, 46 N. W. (2d) 94, and Faribault Daily News, Inc. v. International Typog. Union,

236 Minn. 303, 53 N. W. (2d) 36; Annotation, 32 A. L. R. (2d) 1026.

[fol. 86] Under the original Federal Labor Management Relations Act of 1935 the contention of defendants no doubt would be sound. Packard Motor Car Co. v. National Labor Relations Board, 330 U. S. 485, 67 S. Ct. 789, 91 L. ed. 1040. The Federal act, however, was amended in 1947 by the so-called Taft-Hartley Act, and the amendments brought about at that time are of great importance in this case. As so amended, the law is found in 29 USCA, § 152(3), 61 Stat. 137, and, as far as pertinent here, reads:

> "The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless this subchapter explicitly states otherwise, * * * *but shall not include* * * * *any individual employed as a supervisor,* * * *.*" (Italics supplied.)

29 USCA, § 152(11), 61 Stat. 138, reads:

> "The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

29 USCA, § 164(a), 61 Stat. 151, reads:

> "Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this subchapter shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining."

29 USCA, § 157, 61 Stat. 140, defines the right of employees to organize and reads:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158 (a)(3) of this title."

[fol. 87] The trial court found that the engineers employed by plaintiffs were supervisors within the meaning of the above Federal provisions. That finding has ample support in the record and is not, we believe, seriously disputed by defendants.

Defendants argue, however, that it has now been determined in National Marine Engineers Beneficial Assn. v. National Labor Relations Board (2 Cir.) 274 F. (2d) 167, that MEBA is a labor organization subject to the secondary boycott provisions of the Federal act and that, inasmuch as the complaint in this case alleges a violation of the secondary boycott provisions of both state and Federal laws, it follows that the National Labor Relations Board has exclusive jurisdiction under our decision in Norris Grain Co. v. Seafarers' International Union, *supra*. This contention is untenable for at least two reasons. In the first place, the Federal court did not hold that MEBA is a labor organization under the evidence in this case. Decision in that case was based squarely on the facts there involved. To make this clear, the court said (274 F. [2d] 175):

"* * * The Board [National Labor Relations Board] could properly have thought that the matters placed in the record by the general counsel justified an inference that non-supervisors do participate in MEBA and MMP, and that this sufficed for the Board's finding to that effect unless they were rebutted by more convincing evidence than the unions offered here. We

> therefore cannot say the Board's finding that MEBA and MMP were labor organizations did not meet the standards laid down in Universal Camera Corp. v. N. L. R. B., 1951, 340 U. S. 474, 71 S. Ct. 456, 95 L. Ed. 456. *We are not saying that MEBA* and MMP *are or are not in fact 'labor organizations' within the meaning of §8(b) today. We say only that we cannot hold, on the evidence in this record, that the Board was unjustified in finding that they were in April, 1957.* We do not look with favor on the practice of determining such an issue by the citation of previous Board proceedings rather than by an investigation of the facts." (Italics supplied.)

[fol. 88] Secondly, Norris Grain Co. v. Seafarers' International Union, *supra*, had nothing to do with supervisory employees who are expressly excluded by the Taft-Hartley amendment to the Federal labor act.

We fully realize that in determining whether a state court has jurisdiction over any phase of labor relations involving interstate commerce we are treading in a no man's land where the boundaries are frequently obscure,[1] but it seems to us that, when Congress expressly excluded supervisory employees from the Federal act and left it clearly up to management to determine whether it would recognize and deal with the union as a bargaining agent for such employees, it left this field open to state regulation.[2] Any other conclusion would lead to the result that labor practices in this area would be subject to no regulation at all. We are convinced that here the state court had jurisdiction. The same result was reached by the California court in Safeway Stores, Inc. v. Retail Clerks International Assn., 41 Cal. (2d) 567, 261 P. (2d) 721, and In re Kelleher, 40 Cal. (2d) 424, 254 P. (2d) 572; and by the New York court in 260 Madison Avenue Corp. v. Nelson, 284 App. Div. 254, 131 N. Y. S. (2d) 426.

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[1] See, Labor Relations Law, 1959 Annual Survey of American Law, New York University School of Law, p. 145.

[2] See, McLean Distributing Co. Inc. v. Brewery & Beverage Drivers, 254 Minn. 204, 94 N. W. (2d) 514, certiorari denied, 360 U. S. 917, 79 S. Ct. 1436, 3 L. ed. (2d) 1534.

2. We then come to the more difficult question as to whether plaintiffs were entitled to an injunction under our state law. Crucial to a determination of this question are [fol. 89] the following findings of the court:

> "15. The * * * purpose and objective of the picketing and activities of MEBA Local 101, hereinabove described is to secure from plaintiffs the same type of agreement or understanding which it has obtained from others employers operating bulk cargo vessels on the Great Lakes. Every agreement or understanding between said defendant and other Great Lakes vessel companies includes a provision requiring every licensed engineer hired after a specified date to become a member of said defendant organization within thirty days from the date of his employment as a condition of continued employment.
>
> "16. The further purpose and objective of defendants' picketing and activities as described above was to coerce and induce plaintiffs to force, compel or induce engineers employed on Interlake vessels to become members of MEBA Local 101 and was for the purpose of injuring plaintiffs in their business because of their refusal to in any way interfere with the rights of engineers employed on Interlake vessels to join or not to join said defendant organization.
>
> "17. The further purpose and objective of defendants' picketing and activities as described above was to coerce and intimidate plaintiffs in order to secure recognition from plaintiffs of MEBA Local 101 as the collective bargaining agent for the licensed engineers employed on Interlake vessels."

It is the contention of defendants that these findings are not supported by the evidence; that the only purpose of picketing was to obtain leave to board plaintiffs' vessels so that agents of MEBA could talk to the engineers and attempt to induce them to become members of the union; and that a further purpose was to procure an election to be conducted by some impartial group to ascertain whether the engineers wished to have MEBA represent them as

collective bargaining agents. It is conceded by all that the National Labor Relations Board would not conduct such election.

The stipulation of defendants' counsel as to the purpose of the picketing is somewhat revealing. He said:

> [fol. 90] "The Marine Engineers Beneficial Association is prepared to stipulate * * * that the purpose of picketing * * * the plaintiff in this case—was to improve the wages, hours and working conditions of the licensed engineers of the plaintiff company as well as the wages, hours and working conditions of the licensed engineers of other companies on the Great Lakes and on the high seas; and that, more specifically, its purpose was to secure—well strike that. And that in furtherance of this policy that its purpose was to obtain from the defendant the type of agreement or understanding that it has obtained from other companies on the Great Lakes under similar circumstances; the type of understanding that has been obtained elsewhere, and that the defendant Marine Engineers Beneficial Association would feel appropriate in this case and would feel would serve the purpose of improving the wages, hours and working conditions of the engineers which is, number 1: That representatives of the Marine Engineers Beneficial Association be given permission to go aboard the vessels * * * of the plaintiff * * * at such reasonable times and places as may be agreed to between the parties, and secondly: to secure an understanding from the company that on request from the Marine Engineers Beneficial Association, within such reasonable time as may be established by the parties and on such a showing as may be agreed to by the parties, that the plaintiff would agree that an election could be held among the licensed engineers of the company for the purpose of determining whether or not the employees voluntarily and freely, of their own will, in a secret ballot desire to be represented by this association with the understanding being, of course, that if such an election is held and if the employees indicate that they do not desire to be repre-

sented by the Marine Engineers Beneficial Association that no further efforts would be made in this action for such reasonable period of time as might be agreed to between the parties."

The signs carried by the pickets also are significant in establishing the ultimate objective of the picketing.

The record discloses, without dispute, that the type of contract which MEBA desired to obtain contained a union security clause requiring all engineers at some time in the future to become members of the union.

In determining what the ultimate purpose of the picketing was, the court was justified in drawing reasonable inferences from the evidence. After all, courts need not be oblivious to facts which are apparent to all others. Here, no dispute existed between plaintiffs and their employees. [fol. 91] None of plaintiffs' employees took part in the picketing, but the pickets were entirely agents of MEBA, some of whom came from places far removed from the scene of the activity. It is conceded that MEBA did not represent such employees although it is claimed that a few of the engineers did belong to MEBA. No request had been made of anyone having authority to grant it on behalf of plaintiffs for leave to board its ships or to have an election, which defendants claim was the sole purpose of the picketing. The pickets simply appeared on the scene like ghosts in the night and effectively and immediately tied up the unloading of plaintiffs' ships due to the fact that the employees of Carnegie Dock & Fuel Company refused to work on the ships as long as the pickets remained there. It is apparent that the ultimate object of MEBA was to procure a contract having a union security clause in it which would require engineers in the future to become members of the union. We think that the court had ample justification in finding, as it did, that the purpose of the picketing was to coerce or compel plaintiffs to accept a contract having in it a union security clause.

3. Under the Minnesota Labor Relations Act, supervisors are not excluded as they are under the Federal act, although Minn. St. 179.16 places them in a separate cate-

gory in that they cannot vote in the selection of a bargaining agent.

Section 179.10 contains a declaration of public policy adopted by our legislature with respect to rights of employees. Subd. 1 thereof reads:

> "Employees shall have the right of self-organization and the right to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, con- [fol. 92] certed activities for the purpose of collective bargaining or other mutual aid or protection; and such employees shall have the right to refrain from any and all such activities."

In 1947, our legislature added § 179.42, which reads:

> "It is an unlawful act and an unfair labor practice for any person or organization to combine with another, to cause loss or injury to an employer, to refuse to handle or work on particular goods or equipment or perform services for an employer, or to withhold patronage, or to induce, or to attempt to induce, another to withhold patronage or other business intercourse, for the purpose of inducing or coercing such employer to persuade or otherwise encourage or discourage his employees to join or to refrain from joining any labor union or organization or for the purpose of coercing such employer's employees to join or refrain from joining any labor union or organization."

Section 179.12, as far as here material, reads:

> "It shall be an unfair labor practice for an employer:
>
> • • • • • • •
>
> "(3) To encourage or discourage membership in any labor organization by discrimination in regard to hire or tenure of employment or any terms or conditions of employment: provided, that this clause shall not apply to the provisions of collective bargaining agreements entered into voluntarily by an employer and his em-

ployees or a labor organization representing the employees as a bargaining agent, as provided by section 179.16."

Thus, under § 179.12(3), it is an unfair labor practice for employers to enter into agreements containing union security clauses unless such provisions are contained in agreements entered into voluntarily by an employer and his employees or a labor organization representative as a collective bargaining agent as provided by § 179.16.

In The Dayton Co. v. Carpet, Linoleum, etc., Union, 229 Minn. 87, 39 N. W. (2d) 183, appeal dismissed, 339 U. S. 906, 70 S. Ct. 570, 94 L. ed. 1334, we held that it was an unlawful practice for an employer to coerce employees into belonging to a union unless done in accordance with § 179.12. We held that this section relates solely to unfair [fol. 93] labor practices by employers. We left open the question of whether or not acts done by a labor organization seeking to compel an employer to violate § 179.12(3) may also be enjoined. Inasmuch as we now uphold the trial court's finding that the picketing in this case was conducted for the purpose of coercing the employer to enter into a contract containing a union security clause contrary to § 179.12(3), the question we left open in the The Dayton Company case is squarely before us. To hold that for an employer to coerce or compel his employees to become members of a union against their will is an unfair labor practice which may be enjoined but that a union is free to bring economic pressure on such employer to do that which the law prohibits him from doing would place an employer in an unenviable position indeed. He could then refuse compliance with the union's demands, as the law would require him to do, and suffer a possible destruction of his business or, at the very least, serious economic loss, or he could comply with the union's demands and be held guilty of having committed an unfair labor practice under the law. In this sensitive area of balancing rights of labor and management in the field of labor relations, we do not believe that we need give the statutes of this state a construction which will lead to such an unfair and absurd result.

Many of the arguments advanced here were considered by the Indiana court in Roth v. Local Union No. 1460 of Retail Clerks Union, 216 Ind. 363, 24 N. E. (2d) 280. Indiana has an anti-injunction statute quite similar to our c. 185. The Indiana statute contains a declaration of public policy quite similar to that found in our statutes. In holding that picketing by a union to compel an employer to enter into a closed-shop agreement could be enjoined, the Indiana court said (216 Ind. 370, 24 N. E. [2d] 282):

> "* * * The statute here under consideration declares [fol. 94] that it is the public policy of this state that the individual unorganized worker shall be free to decline to associate with his fellows and that he shall be free from interference, restraint, or coercion on the part of his employer. This must mean that no labor union may demand that an employer require his employee to join such union, because no employer has the right to require an employee to join or refrain from joining a labor union. *Any person or group which undertakes to coerce an employer to do that which is contrary to the express public policy of this state thereby undertakes to compel the performance of an unlawful act. The lawful weapon of peaceful picketing may not be utilized to accomplish such an unlawful purpose.* It is quite immaterial that the things done to bring about the unlawful purpose were not *per se* unlawful." (Italics supplied.)

In Gazzam v. Building Service etc. Union, 29 Wash. (2d) 488, 500, 188 P. (2d) 97, 103, 11 A. L. R. (2d) 1330, 1337,[3] the Washington court, following the Indiana court, said:

> "We hold that the acts of respondents, in so far as the picketing was concerned, were coercive—first, because they violated the provisions of Rem. Rev. Stat. (Sup.) § 7612-2, and, second, because they were in violation of the rules of common law as announced in the cases just approved."

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[3] For the second decision in this case, see Id. 34 Wash. (2d) 38, 207 P. (2d) 699, affirmed, 339 U. S. 532, 70 S. Ct. 784, 94 L. ed. 1045.

On appeal to the United States Supreme Court, Building Service etc. Union v. Gazzam, 339 U. S. 532, 538, 70 S. Ct. 784, 788, 94 L. ed. 1045, 1051, the court said:

> " * * * Picketing of an employer to compel him to coerce his employees' choice of a bargaining representative is an attempt to induce a transgression of this policy, and the State here restrained the advocates [fol. 95] of such transgression from further action with like aim. To judge the wisdom of such policy is not for us; ours is but to determine whether a restraint of picketing in reliance on the policy is an unwarranted encroachment upon rights protected from state abridgment by the Fourteenth Amendment."

Maine also has a statute quite similar to ours. In Pappas v. Stacey, 151 Me. 36, 41, 116 A. (2d) 497, 499, appeal dismissed, 350 U. S. 870, 76 S. Ct. 117, 100 L. ed. 770, the Maine court said:

> "Under the statute enacted in P. L., 1941, c. 292, *supra*, the employee, or worker, is protected from 'interference, restraint or coercion by their employers or other persons * * *.' The worker must be left free from interference by employer or other persons in reaching a decision whether to join or refrain from joining a union. It follows necessarily that pressure cannot lawfully be directed against the employer to force him to interfere with the free choice of his employees. The plaintiff cannot lawfully be placed in a position where compliance with the strikers' demands requires action in violation of the law of the State."

International Brotherhood of Teamsters v. Vogt, Inc., 354 U. S. 284, 77 S. Ct. 1166, 1 L. ed. (2d) 1347, contains a comprehensive review of the decisions of the United States Supreme Court on this subject. The United States Supreme Court affirmed a decision of the Wisconsin court, Vogt, Inc. v. International Brotherhood of Teamsters, 270 Wis. 315, 321g, 74 N. W. (2d) 749, 753, where the Wisconsin court said:

> " • • • Picketing may be more than free speech. When it is conducted, as it was in this instance, upon a rural highway at the entrance to a gravel pit where an exceedingly small number of possible or probable patrons of the owner's business might pass and be influenced by the union's banner, it is more than the mere exercise of the right of free communication. One would be credulous, indeed, to believe under the circumstances that the union had no thought of coercing the employer to interfere with its employees in their right to join or refuse to join the defendant union. We have not the slightest doubt that it was the hope of the union that the presence of pickets at plaintiff's place of business would interfere with its operation and deprive it of delivery service, thus bringing pressure upon it to coerce its employees to join the union."

[fol. 96] In affirming the decision of the Wisconsin court, the United States Supreme Court said (354 U. S. 294, 77 S. Ct. 1171, 1 L. ed. [2d] 1354):

> "The Stacey case [Pappas v. Stacey, *supra*] is this case. • • • As in Stacey, the highest state court drew the inference from the facts that the picketing was to coerce the employer to put pressure on his employees to join the union, in violation of the declared policy of the State. (For a declaration of similar congressional policy, see § 8 of the National Labor Relations Act, 61 Stat. 140, 29 U. S. C. § 158.) The cases discussed above all hold that, consistent with the Fourteenth Amendment, a State may enjoin such conduct."

Many other cases could be discussed, but we think that it is now evident that picketing, even though peacefully conducted, may go beyond the legitimate exercise of the right of free speech; that when its ultimate purpose is to coerce or compel an employer to commit an unlawful act the picketing itself becomes unlawful and may be enjoined; and that in finding what is the purpose of picketing the court may look through a veil of legitimacy and determine what the picketing is intended to accomplish. In so doing,

the trial court is permitted to draw reasonable inferences from the evidence the same as in any other field of litigation, and, when findings are based on inferences so drawn, they must stand if there is reasonable support for them in the record. Here, the court's finding that the purpose of the picketing was to compel or coerce the employer into committing an unfair labor practice under our law finds ample support in the record. That being true, the picketing itself becomes unlawful.

4. There remains then only the question of whether the injunction is prohibited by our Minnesota Anti-Injunction Act, Minn. St. c. 185. The public policy of this state is declared in § 185.08, and in the application of the so-called Anti-Injunction Act the legislature has specifically stated that interpretation should be based upon such public policy. As so declared, it reads as far as material [fol. 97] here:

> "Whereas, under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the state, are hereby enacted."

Obviously, the act was passed for the purpose of protecting the right of employees to have freedom of choice in

the selection of their bargaining agent and was not intended for the purpose of permitting the commission of unlawful acts. We do not believe that the act here enjoined comes within the category of those things which are protected by the act. See, for instance, the acts specified in § 185.10.

We have considered all other contentions of the parties, as well as authorities cited, but see no need of further extending this opinion. We are convinced that the trial court properly enjoined the conduct complained of.

Affirmed.

Mr. Justice Otis, not having been a member of the court at the time of the argument and submission, took no part in the consideration or decision of this case.

[fol. 98]

State of Minnesota, Supreme Court

38110

Interlake Steamship Company and
Pickands-Mather & Company, Respondents,

vs.

Marine Engineers Beneficial Association, Charles La Porte, Fred L. Beatty, Joe Doe and Richard Roe, Local 101, Appellants.

Judgment—Dated and Signed April 13, 1961

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the order of the Court below, herein appealed from, to-wit, of the District Court within and for the County of St. Louis be and the same hereby is in all things affirmed.

And it is further determined and adjudged that respondents herein, do have and recover of appellants herein the sum and amount of Three Hundred Seventy-Six and 20/100

Dollars, ($376.20) costs and disbursements in this cause in this Court, and that execution may be issued for the enforcement thereof.

Dated and signed April 13, 1961

By the Court, Attest: Mae Sherman, Clerk.

STATEMENT FOR JUDGMENT

Statutory Costs $25.00 Printer $351.20 Clerk $..... Acknowledgments $..... Return $..... Postage and Express $..... Appeal Bond $..... Transcript $.....
Total $376.20

[fol. 99] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 100]

SUPREME COURT OF THE UNITED STATES

No. 166—October Term, 1961

MARINE ENGINEERS BENEFICIAL ASSOCIATION, et al., Petitioners,

vs.

INTERLAKE STEAMSHIP COMPANY, et al.

ORDER ALLOWING CERTIORARI—October 9, 1961

The petition herein for a writ of certiorari to the Supreme Court of the State of Minnesota is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

IN THE

Supreme Court of the United States

October Term, 1960

No. 166

INTERLAKE STEAMSHIP COMPANY, a corporation, and PICKANDS-MATHER & CO., a co-partnership,
Respondents

v.

MARINE ENGINEERS BENEFICIAL ASSOCIATION, CHARLES LAPORTE, FRED L. BEATTY, JOHN DOE, RICHARD ROE, AND MARINE ENGINEERS BENEFICIAL ASSOCIATION, LOCAL 101,
Petitioners

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA

LEE PRESSMAN
50 Broadway
New York City, New York

WILDERMAN, MARKOWITZ & KIRSCHNER
RICHARD H. MARKOWITZ
735 Philadelphia Saving Fund Bldg.
Philadelphia 7, Pennsylvania

Attorneys for Petitioners

THE LEGAL INTELLIGENCER, 10 S. 37TH ST., PHILA. 4

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IN THE

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Petitioners

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA

Marine Engineers Beneficial Association, Charles LaPorte, Fred L. Beatty, John Doe, Richard Roe, and Marine Engineers Beneficial Association, Local 101, pray that a Writ of Certiorari issue to review the judgment of the Supreme Court of Minnesota in this case.

OPINION BELOW

The Opinion of the District Court of St. Louis County, State of Minnesota (R. 33-46) is unreported. The Opinion of the Supreme Court of Minnesota is reported at 108 N. W. 2d 627 (1961).

JURISDICTION

The Decree of the Supreme Court of Minnesota was entered on March 30, 1961 (Appendix 13-29). The jurisdiction of this Court is conferred by 28 U. S. C. 1257.

QUESTION PRESENTED

May a state court enjoin activity clearly within the prohibitions of Section 8 of the National Labor Relations Act and therefore within the exclusive jurisdiction of the National Labor Relations Board?

STATUTORY PROVISIONS INVOLVED

Labor Management Relations Act of 1947, 61 Stat. 136, et seq., 29 U. S. C. 152, 158, Sections 2(5), 2(11), 8(b)(2), 8(a)(3), 8(b)(4), (Appendix 30-32).

STATEMENT OF THE CASE

The plaintiffs-respondents in this case are Interlake Steamship Company and Pickands-Mather Company. They are the owners and operators of thirty-two bulk cargo ships on the Great Lakes, transporting iron ore, coal, stone and grain between numerous Great Lakes ports in the United States and Canada (R. 8, 9, 21, 57).

The defendant, the petitioner herein, is Marine Engineers Beneficial Association and its Local 101, referred to hereinafter as MEBA. It is a voluntary unincorporated association which represents and collectively bargains for the licensed engineers on approximately ninety-five per cent of all of the merchant vessels in the United States fleet and approximately thirty-five to forty per cent of the merchant fleet on the Great Lakes (R. 264). The MEBA did not

have a collective bargaining agreement with either of the respondents (R. 192), although it claimed some of their engineers as members (R. 268).

On November 11, 1959, the *Samuel Mather*, a vessel owned by the respondent Interlake, docked at the Carnegie Dock & Fuel Company in Duluth, Minnesota, to unload a cargo of coal. Shortly after it berthed, the MEBA began picketing at the entrance to the Carnegie dock (R. 22, 58), and the Carnegie employees refused to proceed with the unloading of the vessel (R. 22). The picket signs read as follows:

> "PICKANDS MATHER UNFAIR TO ORGANIZED LABOR. THIS DISPUTE INVOLVES ONLY P-M. MEBA LOCAL 101, AFL-CIO."
>
> "MEBA LOC. 101 AFL-CIO. REQUEST P-M ENGINEERS TO JOIN WITH ORGANIZED LABOR TO BETTER WORKING CONDITIONS. THIS DISPUTE ONLY INVOLVES P-M." (R. 22, 58).

On the night of November 12, 1959, four or five pickets carrying signs bearing the same legends appeared at the entrance to the Duluth plant of the Interlake Iron Corporation (R. 23, 24, 59, 60). At that time there was no dispute between Interlake and its employees, none of whom was on the picket line.

The picketing was at all times peaceful (R. 27, 63, 145).

A temporary restraining order prohibiting the picketing was issued on November 12, 1959, by the District Court of St. Louis County. A hearing was held on November 18, 1959, after which a temporary injunction was granted. A permanent injunction was ordered on March 28, 1960, and affirmed by the Minnesota Supreme Court on March 30, 1961.

At all stages in these proceedings MEBA took the

position that the state courts should deny the requested injunction for two reasons: (1) that the state courts lacked jurisdiction over the subject matter of this action because it involved activities within the scope of the National Labor Relations Act as amended, and within the exclusive jurisdiction of the National Labor Relations Board (R. 19, 34, 62, 290), and (2) aside from the jurisdictional question, the injunction should be denied on its merits.

Both the trial court and the state Supreme Court ruled against MEBA on both grounds: (1) in their opinion MEBA members were supervisory employees who were expressly excluded from the coverage of the federal statute and not within the jurisdiction of the NLRB (R. 28, 62, 64; Appendix 15-19), and (2) the purpose of the picketing was to compel an employer to coerce its employees to join the Union in violation of state law, and thus the picketing became unlawful and enjoinable.

REASONS FOR GRANTING THE WRIT

1. The decision of the Supreme Court of Minnesota is in plain derogation of this Court's pronouncements with regard to the preemption of the jurisdiction of state (and federal) courts by the authority vested in the National Labor Relations Board.

Examination of recent decisions of this Court reveals the following pertinent guiding principles with regard to this matter:

(1) A state may not enjoin peaceful picketing whose object has been made an unfair labor practice under Section 8 of the federal Labor Management Relations Act, which invests the National Labor Relations Board with the exclusive power to pass on such conduct. *Garner v. Teamsters, Chauffeurs and Helpers, Local Union No. 776 (AFL)*, 346 U. S. 485 (1953).

(2) Even if an unfair labor practice is not clearly involved in such peaceful picketing, ". . . where the facts reasonably bring the controversy within the sections prohibiting these practices, . . . the state court must decline jurisdiction in deference to the tribunal which Congress has selected for determining such issues in the first instance." *Weber v. Anheuser Busch, Inc.*, 348 U. S. 468, 481 (1955).

(3) "When an activity is arguably subject to . . . §8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the NLRB if the danger of state interference with national policy is to be averted." *San Diego Building Trades Council vs. Garmon*, 359 U. S. 236, 245 (1959).

Applying these criteria to the facts found by the trial court and adopted by the state Supreme Court, we can only conclude that the activity of the petitioner MEBA was at the very least "arguably subject to" two subsections of Section 8(b) of the Labor-Management Relations Act of 1947.[1] The trial court found as a fact, and the Supreme Court specifically adopted its finding, that

> "16. The further purpose and objective of defendants' picketing and activities as described above was to coerce and induce plaintiffs to force, compel or induce engineers employed on Interlake vessels to become members of MEBA Local 101 and was for the purpose of injuring plaintiffs in their business because of their refusal to in any way interfere with the rights of engineers employed on Interlake vessels to join or not to join said defendant organization.
>
> "17. The further purpose and objective of defendants' picketing and activities as described above was to coerce and intimidate plaintiffs in order to secure recognition from plaintiffs of MEBA Local 101 as the

[1] Since the picketing occurred on November 12, 1959, the 1959 amendments to this statute, which took effect on November 14, 1959, are not applicable. See P. L. 86-257, 73 Stat. 542 et seq., Section 707.

collective bargaining agent for the licensed engineers employed on Interlake vessels." (R. 26; see also R. 61, 62; Appendix 19, 20).

If these facts were true, then this conduct was not only "arguably subject to", not only "reasonably within", but clearly covered by the prohibition of Section 8(b)(2), which makes it an unfair labor practice for a "labor organization . . . to cause . . . an employer to discriminate against an employee in violation of subsection (a)(3)," which in turn makes it an unfair labor practice for an employer to encourage membership in any labor organization. See *Garner vs. Teamsters, supra*, where the picketing was found by the state trial court to have the same proscribed objective.

The trial court found as facts, and the Supreme Court adopted these findings, that:

"6. From the time of the commencement of this picketing, the employees of the Carnegie Dock & Fuel Company, although having entered the premises of their employer despite such picketing and having performed other duties of their employment, have failed and refused to perform any services whatsoever in connection with the unloading of the Samuel Mather although ordered to do so on numerous occasions."

* * * *

"9. The picketing at the dock company premises continued until the service of the temporary restraining order issued by this Court in the afternoon of November 12, 1959. Despite the absence of formal picketing at the dock company's premises since that time, the dock company employees have continued to refuse to unload the Samuel Mather." (R. 22, 23, 58, 59).

Again the findings of the state court place this conduct squarely within the prohibition of the federal statute. Section 8(b)(4) of the Act outlaws the secondary boycott, that

is, the inducement of the employees of a neutral employer, by picketing or otherwise to engage in a strike or to refuse to perform services where an object thereof is to force one person to cease doing busines with another. The state court's findings that employees of Carnegie Dock and Fuel Company, a neutral employer, were induced by the picketing not to perform services for Interlake indicates a violation of Section 8(b)(4). See *New York, New Haven and Hartford R. R. vs. Local 25, Teamsters*, 350 U. S. 155 (1956), where this Court found conduct to be within the scope of Section 8(b)(4) and reversed the assertion of jurisdiction by a state court.

The state courts were not totally unaware of the decisions of this Court and of the problem of preemption. The lower court refers to the *Garner* case on page 34 of the Record. The Minnesota Supreme Court conceded that in determining whether it had jurisdiction to enjoin the picketing it was "treading in a no-man's land where the boundaries are frequently obscure" (Appendix 18). But the state courts reasoned their way (untenably as it turned out) around the decisions of this Court on the ground that the congressional exclusion of supervisors from the coverage of the Act "left this field open to state regulation" (Appendix 18).

One thing the state courts did not take into consideration is that the decision as to whether a particular employee is or is not a supervisory employee should be made by the National Labor Relations Board. The state court went ahead and decided that the engineers of Interlake were supervisors. In effect it decided that if MEBA had filed a petition with the National Labor Relations Board for an election under Section 9(c) of the Act, the Board would not have acted because its jurisdiction does not cover supervisors. Regardless of the position of MEBA in the state court proceeding, this is obviously a decision which can be made only by the Board, either on a petition by MEBA or on a petition by the employer.[2] This is exactly

the kind of situation which cannot tolerate the chaos of a multiplicity of conflicting rulings. Federal policy does not permit, as this Court has said, the possibility of a conflict in interpretation between state and federal agencies.

But even this is not the critical problem. Picketing by supervisors may still constitute an unfair labor practice if the Board finds that the supervisors constitute a "labor organization" within the meaning of Section 8(b) of the Act, which proscribes unfair labor practices on the part of "a labor organization or its agents." This is a possibility that the Minnesota court did not even consider. It merely assumed that under these circumstances the National Labor Relations Board would decline to act.

Yet the Board has acted in similar situations involving MEBA and has assumed jurisdiction where a violation of Section 8(b)(4) was involved. In *MEBA vs. NLRB*, 274 F. 2d 167 (2d Cir. 1960), the Court of Appeals for the Second Circuit affirmed a Board finding that MEBA had violated Section 8(b)(4) of the Act by engaging in activity similar to that involved here. The Board necessarily found that MEBA was a "labor organization" within the meaning of the Act. The Court of Appeals affirmed this finding. See also *Schauffler vs. Local 101 Marine Engineers Beneficial Association*, 180 F. Supp. 932 (E. D. Pa. 1960) where the Board sought an injunction against conduct of MEBA alleged to violate Section 8(b)(4) of the Act.

The Board might have reached the same result under the instant facts. At the very least MEBA's conduct "is arguably subject to . . . Section 8 of the Act" within the meaning of *Garmon*, and the propriety of its conduct is a matter within the "exclusive competence" of the Board.

The existence of a direct conflict between the position of the Minnesota Supreme Court on the one hand and the Board and the Second Circuit on the other hand is clear. In *Plumbers, Steamfitters, et al., Local 298 AFL, et al. vs.*

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[2] See *Graham Transportation Company and Brotherhood of Marine Engineers*, 124 NLRB 960 (1959), where the Board directed an election among marine engineers similar to those involved here.

County of Door, et al., 359 U. S. 354 (1959), this Court granted certiorari to resolve a similar conflict. It was said:

> "Since the N. L. R. B. had no power, the court ruled, state laws were not preempted and the injunction could stand. Under similar circumstances both the National Labor Relations Board and the United States Court of Appeals for the Third Circuit have concluded that the NLRB has jurisdiction. We granted certiorari to resolve this conflict. 358 U. S. 878." 359 U. S. at p. 356.

The *County of Door* case presented a comparable problem. There the state court determined that it had jurisdiction because a governmental body was involved. Here, the state court believed that supervisors were involved and accordingly that it had jurisdiction. In *County of Door* this Court reversed the state court and held that the Board had jurisdiction to determine whether an unfair labor practice existed. Here the picketing clearly falls within the scope of the federal statute and the determination of its propriety is for the Board and not for the state courts. The Board in the past has exercised its jurisdiction over MEBA and has been upheld by the Court of Appeals for the Second Circuit. *MEBA v. NLRB, supra.*

The exercise by the state court of jurisdiction over MEBA's picketing conflicts with federal regulation of that activity It involves a specific conflict between the power asserted by Congress and the existence of a state remedy. And even if the issue is not clearly established or settled, the state court must defer initially to the federal power.

Here the state court disregarded the express guidance of this Court in *San Diego Building Trades Council, et al. vs. Garmon, et al.*, 359 U. S. 236 (1959). There this Court said:

> "At times it has not been clear whether the particular activity regulated by the States was governed by §7 or

§8 or was, perhaps, outside both these sections. But courts are not primary tribunals to adjudicate such issues. It is essential to the administration of the Act that these determinations be left *in the first instance* to the National Labor Relations Board. What is outside the scope of this Court's authority cannot remain within a State's power and state jurisdiction too must yield to the exclusive primary competence of the Board. See, e.g., *Garner v. Teamsters Union*, 346 U. S. 485, especially at 489-491; *Webster v. Anheuser-Busch, Inc.*, 348 U. S. 468." 359 U. S. at pp. 244, 245. (Emphasis supplied)

The Minnesota Supreme Court assumed the function of the National Labor Relations Board by deciding "in the first instance" that the Board would not assert jurisdiction. No opportunity was given to the Board to determine whether it would act, although it has acted in similar situations in the past. The state court usurped the Board's function by acting as the primary tribunal to adjudicate the scope and coverage of the federal statute. Its decision contravenes the principles expressly announced by this Court.

This case represents an attempt by the state court to circumvent the principles of federal preemption in the labor management field. The application of the federal statute to organizations such as MEBA raises unique and interesting problems. But these are problems which must be answered by the National Labor Relations Board and not by state courts. We respectfully submit that this case is particularly appropriate for the type of summary reversal which this Court has adopted in other cases involving a similar issue. See *Bogle vs. Jakes Foundry Co.*, 362 U. S. 401 (1960); *Machinists District Lodge 34 vs. L. P. Cavett*, 355 U. S. 39 (1957); *Teamsters, Chauffeurs, etc., Local Union No. 327 vs. Kerrigan*, 353 U. S. 968 (1957); *Building Trades Council, et al. vs. Kinard Con-*

struction Company, 346 U. S. 933 (1954). The decision of the state court clearly contravenes the principles of federal preemption and should be summarily reversed.

CONCLUSION

For all the foregoing reasons this petition for certiorari should be granted.

LEE PRESSMAN
50 Broadway
New York City, New York

and

WILDERMAN, MARKOWITZ & KIRSCHNER
By
RICHARD H. MARKOWITZ
733-35 Philadelphia Saving Fund Bldg.
Philadelphia 7, Pennsylvania
Attorneys for Petitioner

APPENDIX "A"

No 9

St. Louis County

Knutson, *J.*
Took no part,
Otis, *J.*

Interlake Steamship Company and
Pickands-Mather & Company,

Respondents,

Endorsed
Filed March 30, 1961
Mae Sherman, Clerk
Minnesota Supreme Court

38110 vs.
Marine Engineers Beneficial
Association, et al.,

Appellants.

SYLLABUS

1. Exclusion of supervisory employees from Federal Labor Management Relations Act of 1947 left field open for state regulation, and state courts have jurisdiction, under proper facts, to enjoin labor organization from committing an act unlawful under state labor law.

2. In determining purpose of picketing in a labor case, a trial court may draw reasonable interferences from evidence the same as in any other field of litigation.

3. Where the purpose of picketing is to coerce or compel an employer to commit an unlawful act, the picketing itself becomes unlawful.

4. Minnesota Anti-Injunction Act, Minn. St. c. 185, does not prohibit the issuance of an injunction to restrain the commission of an unlawful act.

Affirmed.

OPINION

KNUTSON, Justice.

This is an appeal from an order of the district court granting a permanent injunction restraining defendants from picketing under the facts of this case.

Plaintiffs, Interlake Steamship Company and Pickands-Mather & Company, are the owners and operators of the second largest bulk cargo fleet of ships on the Great Lakes. For the most part, its ships transport bulk cargoes of coal and iron ore between Great Lakes ports in the United States and Canada.

Defendant Marine Engineers Beneficial Association, Local 101, referred to hereinafter as MEBA, is a voluntary unincorporated association which admits to membership licensed engineers employed on commercial vessels on the Great Lakes and the oceans.

Defendant Charles LaPorte is an agent and business representative of MEBA. His duties include the direction of the activities of MEBA in Duluth, Minnesota.

On November 11, 1959, Interlake's vessel, *Samuel Mather*, arrived at the dock of the Carnegie Dock & Fuel Company at Duluth, Minnesota, to unload a cargo of coal. The unloading of the vessel by the employees of Carnegie Dock & Fuel Company commenced shortly after the ship had docked. In the normal course of events the ship would have been unloaded in about 34 hours.

Early in the morning of November 12, 1959, five or six men began picketing the single private road entrance to the dock, walking in a tight circle across the road. Some of the men carried signs which read:

> "Pickands-Mather Unfair To Organized Labor This Dispute Only Involves Pickands-Mather M.E.B.A. Loc. 101 A.F.L.-C.I.O."

Others carried signs which read:

> "M.E.B.A. Loc. 101 AFL-CIO Requests P. M. Engineers To Join with Organized Labor to Better Work-

ing Conditions This Dispute Only Involves Pickands-Mather"

After the picketing of this road began, dockworkers employed by Carnegie Dock & Fuel Company refused to proceed with the unloading of the vessel. Later the same day, the District Court of St. Louis County issued a temporary restraining order prohibiting such picketing, but the dockworkers still refused to unload the cargo. As a further result of the picketing, certain independent truck-drivers refused to enter the premises and take delivery of coal for 2 hours.

Defendant Charles LaPorte, who identified himself on November 12, 1959, as business agent of MEBA, Local 101, stated that it was the intention of the union to picket all Pickands-Mather ships coming into the harbor.

On November 15, 1959, while the *Samuel Mather* remained partially unloaded at the dock, Interlake's vessel, *Pickands*, arrived in the Duluth harbor with another load of coal destined for unloading at the same dock. Since the dock could handle only one ship at a time, the *Pickands* had to remain anchored in the harbor for a number of days.

On the night of November 12, 1959, four or five pickets with signs identifying them with MEBA appeared at the entrance to the Duluth plant of the Interlake Iron Corporation and moved around continuously across the plant entrance. At that time there was no dispute between Interlake Iron Corporation and its employees, and none of its employees were on the picket line.

Each Interlake vessel has a chief engineer and three assistant engineers, all of whom are licensed by the coast guard. Plaintiffs' evidence sought to show that all Interlake engineers and assistant engineers are supervisory employees. Defendants introduced no evidence on this point but admitted that all of the engineers and assistant engineers abroad the *Mather* were supervisors.

Plaintiffs had no dispute of any kind with the employees on the Interlake fleet at the time of the picketing,

and prior to the picketing there had never been any negotiations between plaintiffs and defendants nor had defendants ever made any request of the plaintiffs for leave to board its ships. Interlake had an established policy to prohibit any unauthorized person from boarding its ships. Request had never been made of any Interlake official for permission to board such ships, but the right to do so was refused by the person who was on watch at the ship at the time in accordance with the rules of Interlake forbidding any unauthorized person to go aboard.

Plaintiffs' representatives and Interlake's chief executive officers knew of no MEBA members in the fleet. Defendants claim that it did have some such engineers as members but refused to disclose the names thereof. The trial court found that all of the engineers and assistant engineers employed on plaintiffs' vessels are supervisors within the meaning of the National Labor Relations Act.

Picketing which prevented the unloading of the vessels caused financial loss to plaintiffs amounting to about $6,000 per day, not including any profit.

A hearing was held on November 18, 1959, after which a temporary injunction was granted, and a permanent injunction was subsequently ordered on March 28, 1960.

It is the contention of defendants (1) that the state court lacks jurisdiction over the subject matter of the action; and (2) that if the state court does have jurisdiction the injunction should nevertheless have been denied.

1. Defendants first contend that the state court lacks jurisdiction to enjoin picketing for organizational or recognition purposes but that such jurisdiction rests exclusively with the National Labor Relations Board. To support this contention, they rely on Norris Grain Co. v. Seafarers' International Union, 232 Minn. 91, 46 N. W. (2d) 94, and Faribault Daily News, Inc. v. International Typog. Union, 236 Minn. 303, 53 N. W. (2d) 36; Annotation, 32 A. L. R. (2d) 1026.

Under the original Federal Labor Management Relations Act of 1935 the contention of defendants no doubt would be sound. Packard Motor Car Co. v. National Labor Relations Board, 330 U. S. 485, 67 S. Ct. 789, 91 L. ed. 1040. The Federal act, however, was amended in 1947 by the so-called Taft-Hartley Act, and the amendments brought about at that time are of great importance in this case. As so amended, the law found in 29 USCA, §152(3), 61 Stat. 137, and, as far as pertinent here, reads:

> "The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless this subchapter explicitly states otherwise, . . . *but shall not include . . . any individual employed as a supervisor. . . .*" (Italics supplied.)

29 USCA, §152(11), 61 Stat. 138, reads:

> "The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

29 USCA §164(a), 61 Stat. 151, reads:

> "Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this subchapter shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining."

29 USCA, §157, 61 Stat. 140, defines the right of employees to organize and reads:

> "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title."

The trial court found that the engineers employed by plaintiffs were supervisors within the meaning of the above Federal provisions. That finding has ample support in the record and is not, we believe, seriously disputed by defendants.

Defendants argue, however, that it has now been determined in National Marine Engineers Beneficial Assn. v. National Labor Relations Board (2 Cir.) 274 F. (2d) 167, that MEBA is a labor organization subject to the secondary boycott provisions of the Federal act and that, inasmuch as the complaint in this case alleges a violation of the secondary boycott provisions of both state and Federal laws, it follows that the National Labor Relations Board has exclusive jurisdiction under our decision in Norris Grain Co. v. Seafarers' International Union, *supra*. This contention is untenable for at least two reasons. In the first place, the Federal court did not hold that MEBA is a labor organization under the evidence in this case. Decision in that case was based squarely on the facts there involved. To make this clear, the court said (274 F. [2d] 175):

> ". . . The Board [National Labor Relations Board] could properly have thought that the matters placed in the record by the general counsel justified an inference that non-supervisors do participate in

MEBA and MMP, and that this sufficed for the Board's finding to that effect unless they were rebutted by more convincing evidence than the unions offered here. We therefore cannot say the Board's finding that MEBA and MMP were labor organizations did not meet the standards laid down in Universal Camera Corp. v. N. L. R. B., 1951, 340 U. S. 474, 71 S. Ct. 456, 95 L. Ed. 456. *We are not saying that MEBA* and MMP *are or are not in fact 'labor organizations' within the meaning of §8(b) today. We say only that we cannot hold, on the evidence in this record, that the Board was unjustified in finding that they were in April, 1957.* We do not look with favor on the practice of determining such an issue by the citation of previous Board proceedings rather than by an investigation of the facts." (Italics supplied.)

Secondly, Norris Grain Co. v. Seafarers' International Union, *supra*, had nothing to do with supervisory employees who are expressly excluded by the Taft-Hartley amendment to the Federal labor act.

We fully realize that in determining whether a state court has jurisdiction over any phase of labor relations involving interstate commerce we are treading in a no man's land where the boundaries are frequently obscure,[1] but it seems to us that, when Congress expressly excluded supervisory employees from the Federal act and left it clearly up to management to determine whether it would recognize and deal with the union as a bargaining agent for such employees, it left this field open to state regulation.[2] Any other conclusion would lead to the result that labor practices in this area would be subject to no regula-

[1] See, Labor Relations Law, 1959 Annual Survey of American Law, New York University School of Law, p. 145.

[2] See, McLean Distributing Co. Inc. v. Brewery & Beverage Drivers, 254 Minn. 204, 94 N. W. (2d) 514, certiorari denied, 360 U. S. 917, 79 S. Ct. 1436, 3 L. ed. (2d) 1534.

tion at all. We are convinced that here the state court had jurisdiction. The same result was reached by the California court in Safeway Stores, Inc. v. Retail Clerks International Assn. 41 Cal. (2d) 567, 261 P. (2d) 721, and In re Kelleher, 40 Cal. (2d) 424, 254 P. (2d) 572; and by the New York court in 260 Madison Avenue Corp. v. Nelson, 284 App. Div. 254, 131 N. Y. S. (2d) 426.

2. We then come to the more difficult question as to whether plaintiffs were entitled to an injunction under our state law. Crucial to a determination of this question are the following findings of the court:

> "15. The . . . purpose and objective of the picketing and activities of MEBA Local 101, hereinabove described is to secure from plaintiffs the same type of agreement or understanding which it has obtained from other employers operating bulk cargo vessels on the Great Lakes. Every agreement or understanding between said defendant and other Great Lakes vessel companies includes a provision requiring every licensed engineer hired after a specified date to become a member of said defendant organization within thirty days from the date of his employment as a condition of continued employment.
>
> "16. The further purpose and objective of defendants' picketing and activities as described above was to coerce and induce plaintiffs to force, compel or induce engineers employed on Interlake vessels to become members of MEBA Local 101 and was for the purpose of injuring plaintiffs in their business because of their refusal to in any way interfere with the rights of engineers employed on Interlake vessels to join or not to join said defendant organization.
>
> "17. The further purpose and objective of defendants' picketing and activities as described above was to coerce and intimidate plaintiffs in order to secure recognition from plaintiffs of MEBA Local

101 as the collective bargaining agent for the licensed engineers employed on Interlake vessels."

It is the contention of defendants that these findings are not supported by the evidence; that the only purpose of picketing was to obtain leave to board plaintiffs' vessels so that agents of MEBA could talk to the engineers and attempt to induce them to become members of the union; and that a further purpose was to procure an election to be conducted by some impartial group to ascertain whether the engineers wished to have MEBA represent them as collective bargaining agents. It is conceded by all that the National Labor Relations Board would not conduct such election.

The stipulation of defendants' counsel as to the purpose of the picketing is somewhat revealing. He said:

> "The Marine Engineers Beneficial Association is prepared to stipulate . . . that the purpose of picketing . . . the plaintiff in this case—was to improve the wages, hours and working conditions of the licensed engineers of the plaintiff company as well as the wages, hours and working conditions of the licensed engineers of other companies on the Great Lakes and on the high seas; and that, more specifically, its purpose was to secure—well strike that. And that in furtherance of this policy that its purpose was to obtain from the defendant the type of agreement or understanding that it has obtained from other companies on the Great Lakes under similar circumstances; the type of understanding that has been obtained elsewhere, and that the defendant Marine Engineers Beneficial Association would feel appropriate in this case and would feel would serve the purpose of improving the wages, hours and working conditions of the engineers which is, number 1: That representatives of the Marine Engineers Beneficial Association be given permission to go aboard the vessels . . . of

> the plaintiff . . . at such reasonable times and places as may be agreed to between the parties, and secondly: to secure an understanding from the company that on request from the Marine Engineers Beneficial Association, within such reasonable time as may be established by the parties and on such a showing as may be agreed to by the parties, that the plaintiff would agree that an election could be held among the licensed engineers of the company for the purpose of determining whether or not the employees voluntarily and freely, of their own will, in a secret ballot desire to be represented by this association with the understanding being, of course, that if such an election is held and if the employees indicate that they do not desire to be represented by the Marine Engineers Beneficial Association that no further efforts would be made in this action for such reasonable period of time as might be agreed to between the parties."

The signs carried by the pickets also are significant in establishing the ultimate objective of the picketing.

The record discloses, without dispute, that the type of contract which MEBA desired to obtain contained a union security clause requiring all engineers at some time in the future to become members of the union.

In determining what the ultimate purpose of the picketing was, the court was justified in drawing reasonable inferences from the evidence. After all, courts need not be oblivious to facts which are apparent to all others. Here, no dispute existed between plaintiffs and their employees. None of plaintiffs' employees took part in the picketing, but the pickets were entirely agents of MEBA, some of whom came from places far removed from the scene of the activity. It is conceded that MEBA did not represent such employees although it is claimed that a few of the engineers did belong to MEBA. No request had been made of anyone having authority to grant it on

behalf of plaintiffs for leave to board its ships or to have an election, which defendants claim was the sole purpose of the picketing. The pickets simply appeared on the scene like ghosts in the night and effectively and immediately tied up the unloading of plaintiffs' ships due to the fact that the employees of Carnegie Dock & Fuel Company refused to work on the ships as long as the pickets remained there. It is apparent that the ultimate object of MEBA was to procure a contract having a union security clause in it which would require engineers in the future to become members of the union. We think that the court had ample justification in finding, as it did, that the purpose of the picketing was to coerce or compel plaintiffs to accept a contract having in it a union security clause.

3. Under the Minnesota Labor Relations Act, supervisors are not excluded as they are under the Federal act, although Minn. St. 179.16 places them in a separate category in that they cannot vote in the selection of a bargaining agent.

Section 179.10 contains a declaration of public policy adopted by our legislature with respect to rights of employees. Subd. 1 thereof reads:

> "Employees shall have the right of self-organization and the right to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection; and such employees shall have the right to refrain from any and all such activities."

In 1947, our legislature added §179.42, which reads:

> "It is an unlawful act and an unfair labor practice for any person or organization to combine with another, to cause loss or injury to an employer, to refuse to handle or work on particular goods or equipment or perform services for an employer, or to withhold patronage, or to induce, or to attempt to induce,

another to withhold patronage or other business intercourse, for the purpose of inducing or coercing such employer to persuade or otherwise encourage or discourage his employees to join or to refrain from joining any labor union or organization or for the purpose of coercing such employer's employees to join or refrain from joining any labor union or organization."

Section 179.12, as far as here material, reads:

"It shall be an unfair labor practice for an employer:

* * * *

"(3) To encourage or discourage membership in any labor organization by discrimination in regard to hire or tenure of employment or any terms or conditions of employment; provided, that this clause shall not apply to the provisions of collective bargaining agreements entered into voluntarily by an employer and his employees or a labor organization representing the employees as a bargaining agent, as provided by section 179.16."

Thus, under §179.12(3), it is an unfair labor practice for employers to enter into agreements containing union security clauses unless such provisions are contained in agreements entered into voluntarily by an employer and his employees or a labor-organization representative as a collective bargaining agent as provided by §179.16.

In the Dayton Co. v. Carpet, Linoleum, etc., Union, 229 Minn. 87, 39 N. W. (2d) 183, appeal dismissed, 339 U. S. 906, 70 S. Ct. 570, 94 L. ed. 1334, we held that it was an unlawful practice for an employer to coerce employees into belonging to a union unless done in accordance with §179.12. We held that this section relates solely to unfair labor practices by employers. We left open the question of whether or not acts done by a labor organization seeking to compel an employer to violate §179.12(3) may also be

enjoined. Inasmuch as we now uphold the trial court's finding that the picketing in this case was conducted for the purpose of coercing the employer to enter into a contract containing a union security clause contrary to §179.12(3), the question we left open in The Dayton Company case is squarely before us. To hold that for an employer to coerce or compel his employees to become members of a union against their will is an unfair labor practice which may be enjoined but that a union is free to bring economic pressure on such employer to do that which the law prohibits him from doing would place an employer in an unenviable position indeed. He could then refuse compliance with the union's demands, as the law would require him to do, and suffer a possible destruction of his business or, at the very least, serious economic loss, or he could comply with the union's demands and be held guilty of having committed an unfair labor practice under the law. In this sensitive area of balancing rights of labor and management in the field of labor relations, we do not believe that we need give the statutes of this state a construction which will lead to such an unfair and absurd result.

Many of the arguments advanced here were considered by the Indiana court in Roth v. Local Union No. 1460 of Retail Clerks Union, 216 Ind. 363, 24 N. E. (2d) 280. Indiana has an anti-injunction statute quite similar to our c. 185. The Indiana statute contains a declaration of public policy quite similar to that found in our statutes. In holding that picketing by a union to compel an employer to enter into a closed-shop agreement could be enjoined, the Indiana court said (216 Ind. 370, 24 N. E. [2d] 282):

> ". . . The statute here under consideration declares that it is the public policy of this state that the individual unorganized worker shall be free to decline to associate with his fellows and that he shall be free from interference, restraint, or coercion on the part of his employer. This must mean that no labor union may demand that an employer require his employee to join

such union, because no employer has the right to require an employee to join or refrain from joining a labor union. *Any person or group which undertakes to coerce an employer to do that which is contrary to the express public policy of this state thereby undertakes to compel the performance of an unlawful act. The lawful weapon of peaceful picketing may not be utilized to accomplish such an unlawful purpose.* It is quite immaterial that the things done to bring about the unlawful purpose were not *per se* unlawful." (Italics supplied.)

In Gazzam v. Building Service etc. Union, 29 Wash. (2d) 488, 500, 188 P. (2d) 97, 103, 11 A. L. R. (2d) 1230, 1337,[3] the Washington court, following the Indiana court, said:

"We hold that the acts of respondents, in so far as the picketing was concerned, were coercive—first, because they violated the provisions of Rem. Rev. Stat. (Sup.) §7612-2, and, second, because they were in violation of the rules of common law as announced in the cases just approved."

On appeal to the United States Supreme Court, Building Service etc. Union v. Gazzam, 339 U. S. 532, 538, 70 S. Ct. 784, 788, 94 L. ed. 1045, 1051, the court said:

". . . Picketing of an employer to compel him to coerce his employees' choice of a bargaining representative is an attempt to induce a transgression of this policy, and the State here restrained the advocates of such transgression from further action with like aim. To judge the wisdom of such policy is not for us; ours is but to determine whether a restraint of picketing in

[3] For the second decision in this case, see Id. 34 Wash. (2d) 38, 207 P. (2d) 699, affirmed, 339 U. S. 532, 70 S. Ct. 784, 94 L. ed. 1045.

reliance on the policy is an unwarranted encroachment upon rights protected from state abridgment by the Fourteenth Amendment."

Maine also has a statute quite similar to ours. In Pappas v. Stacey, 151 Me. 36, 41, 116 A. (2d) 497, 499, appeal dismissed, 350 U. S. 870, 76 S. Ct. 117, 100 L. ed. 770, the Maine court said:

> "Under the statute enacted in P. L., 1941, c. 292, *supra*, the employee, or worker, is protected from 'interference, restraint or coercion by their employers or other persons. . . .' The worker must be left free from interference by employer or other persons in reaching a decision whether to join or refrain from joining a union. It follows necessarily that pressure cannot lawfully be directed against the employer to force him to interfere with the free choice of his employees. The plaintiff cannot lawfully be placed in a position where compliance with the strikers' demands requires action in violation of the law of the State."

International Brotherhood of Teamsters v. Vogt, Inc. 354 U. S. 284, 77 S. Ct. 1166, 1 L. ed. (2d) 1347, contains a comprehensive review of the decisions of the United States Supreme Court on this subject. The United States Supreme Court affirmed a decision of the Wisconsin court, Vogt, Inc. v. International Brotherhood of Teamsters, 270 Wis. 315, 321 g, 74 N. W. (2d) 749, 753, where the Wisconsin court said:

> ". . . Picketing may be more than free speech. When it is conducted, as it was in this instance, upon a rural highway at the entrance to a gravel pit where an exceedingly small number of possible or probable Patrons of the owner's business might pass and be influenced by the union's banner, it is more than the mere exercise of the right of free communication. One

> would be credulous, indeed, to believe under the circumstances that the union had no thought of coercing the employer to interfere with its employees in their right to join or refuse to join the defendant union. We have not the slightest doubt that it was the hope of the union that the presence of pickets at plaintiff's place of business would interfere with its operation and deprive it of delivery service, thus bringing pressure upon it to coerce its employees to join the union."

In affirming the decision of the Wisconsin court, the United States Supreme Court said (354 U. S. 294, 77 S. Ct. 1171, 1 L. ed. [2d] 1354):

> "The Stacey case [Pappas v. Stacey, *supra*] is this case. . . . As in Stacey, the highest state court drew the inference from the facts that the picketing was to coerce the employer to put pressure on his employees to join the union, in violation of the declared policy of the State. (For a declaration of similar congressional policy, see §8 of the National Labor Relations Act, 61 Stat. 140, 29 U. S. C. §158.) The cases discussed above all hold that, consistent with the Fourteenth Amendment, a State may enjoin such conduct."

Many other cases could be discussed, but we think that it is now evident that picketing, even though peacefully conducted, may go beyond the legitimate exercise of the right of free speech; that when its ultimate purpose is to coerce or compel an employer to commit an unlawful act the picketing itself becomes unlawful and may be enjoined; and that in finding what is the purpose of picketing the court may look through a veil of legitimacy and determine what the picketing is intended to accomplish. In so doing, the trial court is permitted to draw reasonable inferences from the evidence the same as in any other field of litigation, and, when findings are based on inferences so drawn, they must stand if there is reasonable support for them in

the record. Here, the court's finding that the purpose of the picketing was to compel or coerce the employer into committing an unfair labor practice under our law finds ample support in the record. That being true, the picketing itself becomes unlawful.

4. There remains then only the question of whether the injunction is prohibited by our Minnesota Anti-Injunction Act, Minn. St. c. 185. The public policy of this state is declared in §185.08, and in the application of the so-called Anti-Injunction Act the legislature has specifically stated that interpretation should be based upon such public policy. As so declared, it reads as far as material here:

> "Whereas, under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the state, are hereby enacted."

Obviously, the act was passed for the purpose of protecting the right of employees to have freedom of choice in

the selection of their bargaining agent and was not intended for the purpose of permitting the commission of unlawful acts. We do not believe that the act here enjoined comes within the category of those things which are protected by the act. See, for instance, the acts specified in §185.10.

We have considered all other contentions of the parties, as well as authorities cited, but see no need of further extending this opinion. We are convinced that the trial court properly enjoined the conduct complained of.

Affirmed.

/s/ OSCAR R. KNUTSON

MR. JUSTICE OTIS, not having been a member of the court at the time of the argument and submission, took no part in the consideration or decision of this case.

APPENDIX "B"

STATUTORY PROVISIONS INVOLVED

The following are sections of the Labor Management Relations Act of 1947:

DEFINITIONS

"Sec. 2. When used in this Act—

(5) The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. . . .

(11) The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

UNFAIR LABOR PRACTICES

"Sec. 8(a) It shall be an unfair labor practice for an employer—

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act, or in any other statute of the United States, shall preclude an employer

from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective bargaining unit covered by such agreement when made and has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with section 9(f), (g), (h), and (ii) unless following an election held as provided in section 9(e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: Provided further, That no employer shall justify any discrimination against an employee for non-membership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(b) It shall be an unfair labor practice for a labor organization or its agents—

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership; . . .

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; where an object thereof is:

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person . . .".

In the Supreme Court of the United States

OCTOBER TERM, 1960.

No. 166.

INTERLAKE STEAMSHIP COMPANY, a corporation, and PICKANDS-MATHER & CO., a co-partnership,

Respondents,

v.

MARINE ENGINEERS BENEFICIAL ASSOCIATION, CHARLES LAPORTE, FRED L. BEATTY, JOHN DOE, RICHARD ROE, AND MARINE ENGINEERS BENEFICIAL ASSOCIATION, LOCAL 101,

Petitioners.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA.

BRIEF OF RESPONDENTS IN OPPOSITION.

RAYMOND T. JACKSON,
JAMES P. GARNER,
1956 Union Commerce Bldg.,
Cleveland 14, Ohio,

EDWARD T. FRIDE,
1200 Alworth Building,
Duluth 2, Minnesota,
Counsel for Respondents.

Of Counsel:

BAKER, HOSTETLER & PATTERSON,
NYE, SULLIVAN, McMILLAN,
HANFT & HASTINGS.

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OPINIONS BELOW.

The Memorandum of the District Court of St. Louis County, State of Minnesota (R. 33-46), unreported, is printed in Appendix C, *infra*. The Opinion of the Supreme Court of Minnesota (App. A of Petition) is reported at 108 N. W. 2d 627 (1961).

JURISDICTION.

The jurisdictional requisites are adequately set forth in the petition.

QUESTION PRESENTED.

Whether the State courts had, or could exercise, jurisdiction in an action brought to enjoin a union composed of supervisors from picketing employers of supervisors (who were and are not members of said union and whom the Congress specifically excluded from the operation of the National Labor Relations Act as amended by the Labor Management Relations Act of 1947) for the purposes of compelling said employers (1) to recognize said union as the representative of their supervisor employees, (2) to enter into a union shop contract covering their supervisor employees with said union and (3) to force their supervisor employees to join said union as a condition of continued employment, where the activity of said union was alleged, and was found by the State courts, to be in violation of the statutes and public policy of the State and hence unlawful.

The petition does not, and could not, invoke review of the question whether the Supreme Court of Minnesota correctly construed and declared, and correctly applied, the statutes and public policy of the State of Minnesota.

STATUTES INVOLVED.

Sections 2(3), 2(5), 2(11) and 14(a) of the National Labor Relations Act as amended by the Labor Management Relations Act, 1947; Act of June 23, 1947, c. 120, Title I, 61 Stat. 137, 138, 151; 29 U. S. C. 152(3), 152(5), 152 (11), 164(a). Printed App. A to this brief.

Contrary to Petition 2, in our opinion Sections 8(b) (2), 8(a)(3) and 8(b)(4) of the Act as amended, are severally irrelevant. Since no question is, or could be, presented with respect to the interpretation or application of the State statutes by the Supreme Court of the State of Minnesota, those statutes are not here involved.

STATEMENT.

Respondent, Interlake Steamship Company (hereinafter called "Interlake") is the owner, and Pickands-Mather & Co. (hereinafter called "P-M") is the operator, of the second largest bulk cargo fleet of ships operating on the Great Lakes. (R. 57, 156, 158.)* Petitioner, Marine Engineers Beneficial Association, Local 101 (hereinafter called "MEBA") is a voluntary Association which admits to membership licensed Marine engineers employed on commercial vessels operating on the Great Lakes. (R. 57.) Petitioner LaPorte is an agent and business representative of MEBA, whose duties include direction of MEBA's activities in Duluth, Minnesota. (R. 57.)

During the afternoon of November 11, 1959, Interlake's Steamer Samuel Mather arrived with a cargo of coal at the Duluth dock of the Carnegie Dock & Fuel Company (hereinafter called "Carnegie"). The unloading of the ship by Carnegie's employees, which would normally require about 34 hours, commenced shortly after the ship's arrival. (R. 21, 119.)

About 6:30 A. M. on November 12, 1959, MEBA placed pickets across the only entrance road to the Carnegie dock. (R. 58.) Due to the presence of this "picket line," the Carnegie employees refused to proceed with the unloading of the ship and, for approximately 2 hours, independent truck drivers also refused to enter the dock premises to take delivery of coal from Carnegie. (R. 58.)

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* Pursuant to stipulation between the parties, the case was submitted to the trial court for final decision upon the record made at the 5-day hearing on the motion for preliminary injunction. After final hearing, the trial court adopted its amended findings of fact and conclusions of law made after the hearing on the motion for preliminary injunction (R. 56-68) as its findings and conclusions on the merits. (R. 73-5.)

Some of the pickets carried signs of which the following is fairly illustrative:

> "Pickands Mather Unfair to Organized Labor. This Dispute Only Involves P-M. MEBA Loc. 101 AFL-CIO." (R. 58.)

Petitioner LaPorte stated that it was the intention of MEBA Local 101 to picket every Interlake ship which it could locate in the Duluth Harbor. (R. 59, 85-6, 92, 128, 160.)

Formal picketing at the entrance to the Carnegie dock ceased after a temporary restraining order issued by the trial court was served on the afternoon of November 12, 1959. However, the pickets continued to congregate nearby and to prop up their signs against cars also parked nearby; and Carnegie's employees continued their refusal to unload the Samuel Mather until after hearing on the motion for, and until after issuance and service of, a temporary injunction. (R. 59, 131.) None of the pickets was an employee of Interlake or P-M or Carnegie. (R. 87, 89, 160.)

Throughout the period here involved there was no dispute of any kind between Carnegie and its employees or their union. (R. 117.) At and prior to the commencement of the aforesaid picketing on November 12, 1959, there was no dispute between Respondents and their licensed engineers; there had been no communication whatsoever between Petitioners and Respondents; neither MEBA Local 101, nor anyone acting for or on its behalf, had made any written or oral demand or request whatsoever of Respondents, or either of them. (R. 60.) For many years Respondents had established and enforced a uniform policy which prohibited all persons other than employees, their wives, authorized inspectors and suppliers

from boarding any of their vessels at any time for any purpose without a "boarding pass" issued by a Company official. (R. 60, 193, 199-200.) Petitioners had never requested Respondents (1) to issue a boarding pass or boarding passes for any purpose, (2) to enter into negotiations of any kind or (3) to agree to an election among the engineers employed on their vessels. (R. 61-2, 175, 198, 274, 275.)

Certain additional facts with respect to Petitioners' picketing, which were relevant to the cause of action under State law, are not deemed material to the consideration of the only question presented by the instant petition. However, in case this Court should desire to consider or examine those facts, they are summarized below.*

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* About 11:00 P.M. on November 12, 1959 (after service of the temporary restraining order on the pickets at the entrance to the Carnegie dock premises) MEBA placed pickets (carrying the same legends as the signs described, *supra*) at the entrance to the Duluth plant of Interlake Iron Corporation where coal was being unloaded for use at said plant from Interlake's ship Mills. (R. 59-60, 97-100, 103, 106, 107, 161, 162.) There was no dispute between Interlake Iron Corporation and its employees or their union; none of the employees of Interlake Iron or of either Respondent was on the picket line; and MEBA did not have or seek any members among employees of Interlake Iron. (R. 59-60, 96, 99.) The president of the union representing Interlake Iron's employees informed its management that some of its employees would honor any picket line around the plant and that MEBA had "pressured" him to that end. (R. 97, 106; Sup. R. 17.) However, this picketing ceased in about an hour upon service of the temporary restraining order on said pickets; and none of Interlake Iron's employees ceased work in the interim. (R. 59-60.)

On the morning of November 15, 1959, Interlake's steamer Pickands arrived in the Duluth harbor with a cargo of coal consigned to the Carnegie dock, which could accommodate only one ship at a time. Consequently, the Pickands was compelled to anchor outside of the harbor for a number of days pending the unloading of the Samuel Mather. (R. 59, 116, 130-1.) By thus preventing the steamers Mather and Pickands from unloading in the regular course, Petitioners caused Respondents to sustain a loss of $6,000.00 per day exclusive of any profit. (R. 61.)

During the trial Petitioners stated that the previously undisclosed purpose of the aforesaid picketing was to obtain from Respondents an agreement to hold an election by secret ballot among engineers employed on Interlake vessels for the alleged purpose of determining whether said engineers, freely and voluntarily, desired to be represented by MEBA Local 101, "that such an election should be conducted by an impartial body such as the American Arbitration Association," and that the NLRB would not accept jurisdiction when Petitioners were seeking "to represent supervisory employees" such as the engineers employed on Interlake vessels. (R. 111-2.)

Each of Respondents' vessels (including the Samuel Mather and Pickands) has four engineer officers, viz., a chief engineer, a first assistant engineer, a second assistant engineer and a third assistant engineer, each of whom is required to have a license issued by the U. S. Coast Guard.* The chief engineer, who ranks next to the captain, has direct over-all charge of, and responsibility for, the engineer department. The three assistant engineers regularly stand watches of 4 hours each during which each has direct charge of, and responsibility for, the operation, maintenance and repair of all machinery and equipment in the engineering department, for operation of the ship at peak efficiency, for prompt compliance with all commands from the bridge, and for supervision of unlicensed employees. (R. 161, 178-9, 185-6, 206-11; Sup. R. 18-9.) The duties and responsibilities of all engineers and assistant engineers employed on Interlake vessels are accurately summarized in the following finding of the trial court which was approved by the State Supreme Court:

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* As to the foregoing requirement and numerous duties and responsibilities imposed upon engineers licensed to serve on steam vessels including those operating on the Great Lakes, see 46 U. S. C. 221, 222, 224, 229, 231, 240.

> "13. All engineers and assistant engineers employed on Interlake vessels stand watches during which they are in charge of and responsible for the operation and condition of the vessel's propulsion mechanism and responsibly direct, control and supervise the work of the firemen, oilers and coal passers on duty during such watch; they hire, fire, transfer and change the status of and discipline the persons working under them and have authority to and do make effective recommendations respecting the employment and tenure of employment of the people working under them; they handle initially grievances of the employees who are subject to their supervision; the exercise of authority by the engineers and assistant engineers requires the use of independent judgment and discretion; and all such engineers are required to be licensed by the United States Coast Guard." (R. 60-61.)

In judicial admissions made to shorten the hearing in the trial court, Petitioners admitted that all engineers employed on Interlake Steamer Samuel Mather, which was the direct object of the picketing here involved, were and are supervisors and stated that they were unable to make the same admission with respect to every Interlake vessel merely because they did not possess detailed information with respect to every vessel in the Interlake fleet. (Sup. R. 18-9.) In an affidavit the president of National MEBA stated that every member of his union had the very extensive duties, responsibilities and independent authority therein described. (R. 202-4.)

The trial court found that the purpose and objective of the picketing and ancillary activities of MEBA Local 101 were to coerce Respondents to recognize MEBA Local 101 as collective bargaining agent for the licensed engineers employed on Interlake vessels, to force Interlake engineers to become members of MEBA Local 101

and to obtain a union shop agreement under which each licensed engineer hired by Respondents after a specified date would have to become a member of MEBA Local 101 within 30 days after his employment as a condition to continued employment; that Respondents did not claim to represent, or to be the authorized collective bargaining agent for, a majority of the licensed engineers employed by Respondents;* that Petitioners have consistently contended and taken the position in all federal judicial and administrative proceedings that neither the federal courts nor the NLRB has any jurisdiction over them because they are not "labor organizations" within the meaning of the National Labor Relations Act as amended; and that the activities of petitioners hereinbefore described violated certain statutes and the public policy of the State of Minnesota. (Fdgs. 15-20, 23-4; R. 61-3.)

After a 5-day hearing and after extensive briefs had been filed by plaintiffs and defendants, a temporary injunction was granted on November 18, 1959. (R. 30, 46, 66, 70.) On March 28, 1960, after final hearing, a final decree for a permanent injunction was entered. (R. 75.) On March 30, 1961, the Supreme Court of Minnesota unanimously affirmed said decree. (Pet. 2.)

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* Respondents had no knowledge that MEBA had any members among the licensed engineers or among unlicensed personnel employed on the Interlake vessels. While Petitioners were unwilling to concede that MEBA did not have any member who was employed on the Interlake vessels, Petitioners were either unable or unwilling to introduce evidence that any member of a crew on an Interlake vessel was a member of MEBA. (R. 160, 182, 211, 212, 283, 284.)

ARGUMENT.

In the instant case, the facts, found by the State courts on uncontradicted and undisputed evidence and alleged in the complaint, clearly established, both as a matter of fact and law, that the licensed engineers employed on the Interlake ships are supervisors whom the Congress expressly and specifically excluded from the operation of the National Labor Relations Act, and from the jurisdiction of the National Labor Relations Board, by amendments made to that Act in Title I of the Labor Management Relations Act, 1947.

Upon the instant record there is no room for controversy as to the evidentiary facts, as to the only factual inferences which can rationally be drawn from them, or as to the conclusions of law which necessarily follow. As justification for issuance of the writ, Petitioner relies solely upon an unsupportable contention that, even within the narrow area delimited by the admitted facts, the Minnesota courts did not have, or could not exercise, jurisdiction to enjoin a union of supervisors (which sought to coerce Respondents to cooperate in forcing Respondents' licensed engineer officers to become members of such union) from carrying on an activity which, as found and held by the Minnesota courts, violated, and was prohibited by, the statutes and public policy of that State. The decision of the Minnesota courts on the only question presented by the Petition was manifestly correct. Under the language and legislative history of the Act, no other result could have been reached. There is no conflict of decision. Petitioners' contention that the Minnesota courts were without jurisdiction is so lacking in substance as to be frivolous; and no question of federal law is presented which requires, or would justify, review by this Court.

I. THE SUBJECT MATTER OF THE ACTION IN THE MINNESOTA COURTS FELL EXCLUSIVELY WITHIN AN AREA OF LABOR MANAGEMENT RELATIONS WHICH THE CONGRESS EXPRESSLY EXCLUDED FROM THE OPERATION OF THE NATIONAL LABOR RELATIONS ACT AND, A FORTIORI, FROM THE JURISDICTION OF THE NATIONAL LABOR RELATIONS BOARD.

When, as here, a case brought in the State courts involves an area of labor management relations which the Congress has specifically excluded from the operation of the National Labor Relations Act as amended, it is irrelevant to argue, as do Petitioners, that, had the case involved an area of labor management relations within the scope of that Act, the National Labor Relations Board would have had exclusive or primary jurisdiction and that, upon such an irrelevant hypothesis, the State courts either would not have had, nor could not have exercised, jurisdiction.

A. Both the Language and Legislative History of the 1947 Amendments to the National Labor Relations Act Conclusively Establish That Congress Intentionally and Expressly Excluded From the Operation of That Act the Area of Labor Management Relations Which Was Involved in the Minnesota Courts.

Prior to the decision of this Court in *Packard Co. v. Labor Board*, 330 U. S. 485 (Mar. 10, 1947), there was great uncertainty as to whether supervisors were employees within the meaning of the National Labor Relations Act of 1935. In holding that supervisors were employees within the meaning of the 1935 Act, this Court relied upon the circumstance that the term "employee," as defined in the 1935 Act, included "any employee" without any qualification, limitation or exception whatsoever and that supervisors are obviously employees both in common

usage of the word "employee" and in its "most technical sense at common law." (l.c. 488.) Promptly after that decision, Congress enacted Title I of the Labor Management Relations Act, 1947, which amended the 1935 Act so as to make inescapably clear the congressional intent to exclude supervisors from its operation.

First: Congress amended the definition of the term "employee" so that, so far as here material, it now reads (29 U. S. C. 152(3)):

> "The term 'employee' shall include any employee, and shall not be limited to employees of a particular employer, unless this subchapter explicitly states otherwise, * * * *but shall not include* * * * *any individual employed as a supervisor*, * * *." *

Thus, the Congress specifically excluded "supervisors" from the operation of the Act. A further inevitable and intended effect of the foregoing definition of the term "employee" was to exclude any union of supervisors from the category of a "labor organization" within the meaning of Section 2(5), 29 U. S. C. 152(5).

Second: In order to avoid any possibility that the exclusion of supervisors from the operation of the 1935 Act as amended might be defeated or emasculated by fanciful, loose or arbitrary construction of the term "supervisor," Congress incorporated in the 1935 Act a clear and specific definition of that term, which reads (29 U. S. C. 152(11)):

> "The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances,

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* All emphasis in this brief is supplied unless otherwise stated.

> or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

That the licensed engineers employed on ships owned by Interlake and operated by P-M are supervisors within the foregoing definition prescribed by the Congress, is not debatable (*Supra* p. 7).

Third: Although seemingly an unnecessary precaution, Congress also amended the 1935 Act by enacting Section 14(a) of Title I of the Labor Management Relations Act, 1947, 29 U. S. C. 164(a), which reads:

> "Nothing *herein* shall probibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this subchapter shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining." (Italics supplied.)

In the foregoing Section, the words "Nothing *herein*" clearly include each and every provision of the National Labor Relations Act as so amended. Manifestly, Congress shared common knowledge that an employer would not and could not employ supervisors unless he also had other employees to be supervised. To suggest that Congress did not intend to exclude labor management relations between supervisors and their employers if an employer also had other employees to be supervised who would necessarily come within the operation of the Act as amended, would be sheer nonsense and would attribute to the Congress an intent to do a vain and futile thing. The obvious purpose of Congress in enacting Section 14(a) was to preclude any possibility that, by latitudinarian con-

struction, by misapplication of the doctrine of federal preemption or by misapplication of the doctrine of primary administrative jurisdiction, the Act as amended, or its mere existence, could be held not only to exclude supervisors from the Act but to deprive them of such rights as they had, or should have, under the statute and common law of the respective States.

The language of the foregoing amendments to the Act is, we believe, too clear to require or to permit resort to legislative history. However, were the congressional language open to any construction other than that hereinbefore stated, the legislative history of Title I of the Labor Management Relations Act of 1947, by which such amendments were made, would make inescapably clear the intent of Congress to exclude supervisors and their unions from the operation of the National Labor Relations Act. The excerpts from that legislative history, which are printed in Appendix B hereto, are alone sufficient to compel the foregoing conclusion.

In summary, the Congress specifically and categorically excluded from the operations of the National Labor Relations Act the precise area of labor management relations which is the exclusive subject matter of the action in the Minnesota courts.

B. The Petition Does Not Present Any Substantial Federal Question With Respect to the Jurisdiction of the State Courts; and the Decision of the Minnesota Supreme Court In This Respect Is Clearly Correct.

To hold, under the undisputed facts of the instant case, that the Minnesota courts had no jurisdiction to construe, apply and enforce the statutes and public policy of the State of Minnesota, would involve not only a complete disregard of the statutory language and of the clearly express

intent of the Congress but also would constitute judicial legislation.

Throughout our national history the authority of the Congress to exercise part, but not all, of its exclusive constitutional legislative power with respect to any subject and, *a fortiori*, to exclude part of a particular subject of congressional legislation from federal regulation, has never been questioned or doubted. Where, as here, the Congress, in exercising its exclusive constitutional power to legislate with respect to a particular subject, expressly excludes part of the subject matter from the legislation, there is no room for application of the doctrines of federal pre-emption or primary administrative jurisdiction. If such a careful, clear and painstaking exclusion of the area of labor management relations between supervisors and their employers is not effective to preserve State jurisdiction and to enable the Congress to escape defeat by applications of the doctrines of primary administrative jurisdiction or federal pre-emption, then the Congress has ceased to be an independent branch of the Government.

In each of the following cases, it was held that the State court had, and could exercise, jurisdiction in the factual situation presented. *Pappas v. Stacey,* 151 Me. 36, 116 Atl. 2d 497, appeal dis. 350 U. S. 870; *Teamsters Union v. Vogt,* 270 Wisc. 315, 74 N. W. 2d 749, aff'd. 354 U. S. 284; *Cooperative Refinery Ass'n., v. Williams,* 185 Kans. 410, 345 P. 2d 709, Cer. den. 362 U. S. 920; *McLean Co. v. Brewery Co.'s Drivers, etc. Local No. 993,* 254 Minn. 204, 94 N. W. 2d 514, Cer. den. 360 U. S. 917. Each of the foregoing cases involved activity or conduct within the area of labor management relations which was clearly and admittedly subject to the National Labor Relations Act; and jurisdiction of the State courts, if any, depended upon, and required a determination of, the precise character of

the activity or conduct involved and its relation to the provisions of the Act to which it was subject. However, when the subject matter of a State action clearly falls within an area of labor management relations which Congress has expressly excluded from the operation of that Act, such a determination and examination is clearly irrelevant because jurisdiction of the State court could not possibly depend upon, or be affected by, the nature and relation of the activity to the provisions of a statute from the operation of which it has been expressly excluded.

Where, as here, the facts found by the State court establish that the subject matter of the action has been excluded by the Congress from the operation of the National Labor Relations Act, the jurisdiction of a State court can not rationally be denied upon the theory that a State court would be, or might be, barred from exercising jurisdiction over a like activity in the wholly different area of labor management relations which is covered by the Act. In *Benz v. Compania Naviera Hidalgo,* 353 U. S. 138, the subject matter of an action in a diversity case (a labor dispute) clearly came within the exclusive or primary jurisdiction of the NLRB unless excluded from the operation of the National Labor Relations Act as amended. In sustaining diversity jurisdiction to apply state law, this Court held that the failure of Congress expressly to make the Act applicable to labor disputes in the situation there involved, constituted an implied exclusion and sustained jurisdiction of the district court to grant a state common law remedy. *A fortiori,* where, as here, the Congress has *expressly* excluded the subject matter of an action from the operation of the Federal Act, it would be fanciful to hold that the Federal Act deprives State courts of jurisdiction to enforce the statutes and public policy of the State.

II. CONTRARY TO PETITIONERS' ASSERTIONS, THERE IS NO CONFLICT BETWEEN THE DECISION OF THE MINNESOTA SUPREME COURT ON THE ISSUE OF JURISDICTION AND ANY DECISION OF THIS COURT, OF A FEDERAL COURT OF APPEALS OR, WERE IT MATERIAL, OF THE NATIONAL LABOR RELATIONS BOARD.

As hereinbefore shown, the instant case involved an area of labor management relations which the Congress expressly excluded from the operation of the National Labor Relations Act. Consequently, whether a similar factual situation, which falls within the area of labor management relations subject to the operation of that Act, would be subject to, or "arguably subject to," Section 8 or any other section of that Act is wholly irrelevant. Nevertheless, Petitioners' argument that the state courts did not have, or could not exercise, jurisdiction, is based upon the false premise that the subject matter of the action in the Minnesota courts fell within the area of labor management relations covered by the National Labor Relations Act. Having thus set up a straw man, Petitioners irrelevantly argue that, upon the foregoing erroneous premise, their activity would *then* have constituted, or "arguably" might *then* have constituted, an unfair labor practice under Section 8 of the National Labor Relations Act.*

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* Seemingly further to obscure the only question presented, Petitioners quote certain findings of the Minnesota courts as though they had been made in relation to the National Labor Relations Act as amended and irrelevantly argue that, upon the basis of the facts so found, the activity of Local 101 would violate certain provisions of Section 8 of the Federal Act if carried on by a union subject to that Act. (Pet. 5-7.) As hereinbefore shown neither Local 101 nor the licensed engineers were or are subject to the Federal Act; and such findings were made and were relevant solely upon the issue whether the activity of Local 101 violated the statutes and public policy of the State of Minnesota.

A. There Is No Conflict With Any Apposite Decision Of This Court.

Upon that false premise Petitioner argues that the decision of the Minnesota Supreme Court conflicts with decisions of this Court in *Garner v. Teamsters Union*, 346 U. S. 485; *Weber v. Anheuser Busch Co.*, 348 U. S. 468 and *San Diego Unions v. Garmon*, 359 U. S. 236. Each of those cases involved an area of labor management relations which was admittedly subject to the National Labor Relations Act as amended. The union activity involved in each case, if proved, was clearly, or at least arguably, either a violation of, or protected by, one or more provisions of that Act. In the factual situation presented in each of those cases, this Court held that the Congress had vested exclusive or primary jurisdiction over the subject matter in the National Labor Relations Board and, consequently, that state courts, as well as federal courts, were thereby deprived of jurisdiction, or at least were required to withhold the exercise of jurisdiction, until after final adjudication by that Board.

However, the facts alleged in the Complaint and found by the Minnesota courts clearly establish that the subject matter of the instant case falls squarely within an area of labor management relations which Congress expressly excluded from the operation of the National Labor Relations Act as amended. Manifestly, each of the foregoing cases is inapposite.

Nevertheless, it is significant that in the *Garner* case this Court observed that the National Labor Relations Act "leaves much to the states" (l. c. 488) and further, that, in enacting such legislation, Congress, if it chooses "can save alternative or supplemental state remedies by express terms, or by some clear implication" (l. c. 501). As hereinbefore shown, the Congress *specifically and expressly*

excluded the area of labor management relations involved in the case before the Minnesota Courts from the operation of that Act. Moreover, in enacting this exclusion, Congress made clear that its express purpose was to avoid the consequences of the construction of the National Labor Relations Act of 1935 in *Packard Co. v. N. L. R. B.*, 330 U. S. 485. The congressional intent to exclude from the operation of the National Labor Relations Act the area of labor management relations involved in the Minnesota courts could not be more clearly or emphatically evidenced.

B. Contrary to Petitioners' Assertions, There Are No Conflicts Between the Decision of the Minnesota Supreme Court and Any Decision of a Federal Court of Appeals or, Were it Material, of the National Labor Relations Board. (Pet. 8-10.)

As a reason for granting the writ, Petitioner also asserts an alleged conflict "between the position of the Minnesota Supreme Court" and that of the Second Circuit in *National MEBA v. NLRB*, 274 F. 2d 167, (2d Cir.). In that case the Second Circuit held that, upon the basis of the sketchy, inconclusive and out-dated evidence in the record (including a judicial admission by MEBA), the court could not say that the Board's finding that National MEBA was a "labor organization in April, 1957," did not meet the standards of *Universal Camera Corp. v. NLRB*, 340 U. S. 474. (l. c. 175.) However, after criticizing the failure of the Board to require more substantial, complete, and up-to-date evidence, the Court said:

> "*We are not saying* that MEBA and MMP are or are not in fact 'labor organizations' within the meaning of § 8(b) *today. We say only that we cannot hold,* on the evidence in this record, that the Board was unjustified in finding that they were *in April, 1957.*" (l. c. 175.)

On the other hand, the case at bar involved an entirely different factual situation existing *in November 1960* at a widely different geographic location and a record in which the evidence was complete, up-to-date and neither contradicted nor disputed. As stated by the Minnesota Supreme Court:

> "The trial court found that the engineers employed by plaintiffs were supervisors within the meaning of the above Federal provisions. That finding has ample support in the record and is not, we believe, seriously disputed by defendants." (Pet. 17) *

Upon the record in the instant case, MEBA Local 101, the licensed engineers employed on Respondents' ships, and the activity which constituted the subject matter of the State action, were clearly excluded from the operation of the National Labor Relations Act and from the jurisdiction of the National Labor Relations Board as was also held by the Second Circuit in *A. H. Bull Steamship Co. v. National MEBA*, 250 F. 2d 332, 335-6, 339. The most that could be said is that the Minnesota courts and the Second Circuit in 274 F. 2d 167 drew different inferences of ultimate fact from wholly different records which contained wholly different evidence and spoke at wholly different times.**

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* At page 55 of their brief in the Minnesota Supreme Court, Petitioners, in discussing a California decision, said:

> "Therefore, the California decision is distinguishable from the instant case where the Marine Engineers Beneficial Association is made up of supervisory employees and where, in the event of organization, it would not include the nonsupervisory employees of the plaintiff."

** Incidentally, it should be noted that the size of crews, and the duties of licensed engineers, on the huge bulk cargo steamships operating on the Great Lakes and the size of crews, and duties of engineers, on a barge, are hardly comparable. As to the federal qualifications required for, and the duties and responsibilities imposed on, engineers employed on steam vessels on the Great Lakes, see 46 U. S. C. 221, 222, 224, 229, 231 and 240.

If, contrary to our view, the foregoing could constitute a conflict of any kind, it plainly is not the sort of conflict which this Court will review and resolve on a writ of certiorari.

The Petition further cryptically states "See also *Schauffler v. Local 101 MEBA*, 180 F. Supp. 932." (Pet. 8.) This is a report of a hearing upon a motion for a preliminary injunction to preserve the status quo pending determination of the case on the merits. Findings and conclusions upon such a motion are preliminary, tentative and "for the time being only" even in the action in which they are made. Partly upon preliminary and tentative evidence and partly upon an erroneous view that it was bound by *National MEBA v. NLRB*, 274 F. 2d 167, the District Court issued a temporary injunction to preserve the status quo. (l. c. 935, 938.) Apart from the fact that this Court does not grant certiorari to resolve conflicts with a decision of every district court, this tentative and preliminary finding upon a tentative and different record could not conceivably constitute a conflict of decision within the meaning of that term as used in Rule 19-1(a) of this Court.

To support a claim of alleged conflict "between the position of the Minnesota Supreme Court" and that of the National Labor Relations Board, Petitioners state:

> "See *Graham Transportation Company and Brotherhood of Marine Engineers*, 124 NLRB 960 (1959), where the Board directed an election among marine engineers *similar* to those involved here." (Pet. 8, fn. 2.)

Were an alleged conflict with an administrative decision a ground for certiorari, no conflict could be predicated upon the foregoing decision of the Board. *Globe Steamship Co., et al. and Great Lakes Engineers Brotherhood,*

Inc., 85 N. L. R. B. 475, involved *precisely the same licensed engineers (including Interlake's engineers) as does the instant case.* In the *Globe* proceeding the Board held that the engineers and assistant engineers *employed on Interlake vessels* were supervisory employees and that a union seeking to organize and represent them was not subject to, and had no rights under, the Federal Act. Since that decision, there has been no change in the status or duties of Interlake's engineers or assistant engineers. (R. 200.)

Petitioners also cite and quote from *Plumbers' Union v. Door County*, 359 U. S. 354, as presenting "a comparable problem" in which this Court allegedly granted certiorari "to resolve a *similar conflict.*" (Pet. 8-9.) In that case Door County had let a general contract and eight smaller contracts to different contractors for construction of an addition to its County Courthouse. Since the successful bidder for the plumbing work employed non-union labor, the plumbers union threw a picket line around the courthouse which was effective to stop all work because the union members employed by the other contractors would not cross the picket line. Door County, the plumbing contractor, and the general contractor sought an injunction in the state court. No employee of the county was involved. The employers, the employees, and the unions involved were all admittedly subject to the National Labor Relations Act; and the union activity involved, if proved, was clearly, or at least "arguably," either a violation of, or an activity protected by, one or more of the provisions of that Act.

State jurisdiction in the *Door County* case was predicated upon the ground that, as a "political subdivision," Door County was excluded from the Act and that, unless the County could maintain an action in the state court,

it would have no remedy. However, holding that the Act authorized any person (natural or artificial), including those excluded from the definition of employer in the Act, to file with the Board an unfair labor practice charge claiming a violation of the Act by a union *subject to the Act*, this Court further held that the Board was not deprived of exclusive or primary jurisdiction of the Union's alleged violations of the Act. In the instant case, "the picketing" clearly falls within an area of labor management relations which Congress expressly excluded from the operation of the Act; and the case is plainly inapposite. Moreover, in the instant case, unlike the *Door County* case, Respondents had and have no remedy except in the Minnesota courts.

III. PETITIONERS' ATTEMPT TO EVADE STATE JURISDICTION IN AN AREA OF LABOR MANAGEMENT RELATIONS WHICH THE CONGRESS HAS EXPRESSLY EXCLUDED FROM THE NATIONAL LABOR RELATIONS ACT BY MISUSE OF THE DOCTRINES OF PRIMARY ADMINISTRATIVE JURISDICTION AND OF FEDERAL PRE-EMPTION IS UNSUPPORTED AND PLAINLY FRIVOLOUS. (Pet. 7-8.)

Petitioners argue that the Minnesota courts did not have, or could not exercise, jurisdiction because the National Labor Relations Board had primary jurisdiction to determine whether the licensed engineers employed by Respondents were supervisors and whether the picketing by supervisors (i.e. Local 101) constituted an unfair labor practice and a violation of certain sections of the National Labor Relations Act. (Pet. 7-8, 9.) In other words, Petitioners contend that where Congress has specifically excluded an area of labor management relations from the operation of that Act, the state courts do not have, or cannot exercise, jurisdiction over labor management relations in the excluded area unless and until the Board shall have

purported to determine, as a matter of fact and law, that the subject matter of the state action comes within state jurisdiction. Under this theory the Congress, by expressly excluding an area of labor management relations from the Federal Act and, *a fortiori*, from the jurisdiction of the Board, also excluded state jurisdiction in the excluded area either by federal pre-emption or by vesting primary jurisdiction in the NLRB!

As stated by the Second Circuit in *A. H. Bull Steamship Co. v. National MEBA*, 250 F. 2d 332 at 339:

> "The whole thrust of the supervisor provisions in the Taft-Hartley Act of 1947 was to remove supervisors from the operation of the National Labor Relations Act and return them 'to the basis which they enjoyed before the passage of the Wagner Act.' "

The fallacy of the foregoing theory, which is obvious on mere statement, is emphasized by its attempted application to the instant case. In the instant case the facts alleged in the Complaint and the facts found by the state courts inescapably compel a conclusion of law that the subject matter falls within an area of labor management relations excluded from the Federal Act, and, *a fortiori*, from the jurisdiction of the NLRB. If the subject matter of the state action could have been, or could be presented to the NLRB by any procedure and the NLRB had purportedly reached a different conclusion, its conclusion would obviously be based upon a gross error of law.

Petitioners' argument assumes that any "picketing" comes within the National Labor Relations Act and within the primary jurisdiction of the NLRB. Manifestly, however, whether "picketing" comes within either depends, among other things, upon whether the area of labor management relations, in which the picketing is done, is or is not excluded from the operation of the Act.

As carefully defined by the Congress, the dimensions of this excluded area of labor management relations are delimited solely by the character of the employees involved (i.e., supervisors) and not at all (1) by the nature of the activity carried on by them or by any union of which they are members, or (2) by the character of the dispute, if any, between them and their employers. We have not found, and Petitioners do not cite, any decision which holds that State courts do not have, or can not exercise, jurisdiction in an excluded area of labor management relations unless and until the NLRB shall have determined, as matters of fact and law, that the subject matter of the State action is within the jursdiction of a state court. Indeed, the decisions of this Court show that the contrary is true even in the area of labor management relations which clearly and admittedly is subject to the National Labor Relations Act.

In the area of labor management relations which were admittedly subject to the National Labor Relations Act, this Court has repeatedly held that the "Congress did not exhaust the full sweep of [its constitutional] legislative power over industrial relations" (*Weber v. Anheuser-Busch, Inc.*, 348 U. S. 468, 480); that "Congress designedly left open an area for state control" (*Auto Workers v. Wisconsin Board*, 336 U. S. 245, 253); that the Federal Act "leaves much to the States, though Congress has refrained from telling us how much" (*Garner v. Teamsters Union*, 346 U. S. 485, 488); that things left to the States include injurious conduct which is "governable by the State or it is entirely ungoverned" (*Auto Workers v. Wisconsin Board*, 336 U. S. 245, 254); and that the line between the things which Congress has left to, and those which Congress has withdrawn from, State jurisdiction must be drawn case by

case upon the basis of the facts alleged, proved or found in the state courts (see *Weber v. Anheuser-Busch, Inc.*, 348 U. S. 468, 474-7 and cases cited; *San Diego Unions v. Garmon*, 359 U. S. 236, 241, 243).

In *Machinists v. Gonzales*, 356 U. S. 617 at 619 this Court said:

> "As Garner v. Teamsters Union, 346 U. S. 485, could not avoid deciding, the Taft-Hartley Act undoubtedly carries implications of exclusive federal authority. Congress withdrew from the States much that had theretofore rested with them. But the other half of what was pronounced in *Garner—that the Act 'leaves much to the states'—is no less important*. See 346 U. S. at 488."

In dealing with State cases whose subject matter was concededly within the operation of the National Labor Relations Act, this Court has stressed the difficulty of determining "merely on the basis of a complaint and answer, whether the subject matter" had been withdrawn from state jurisdiction. *Weber v. Anheuser Busch, Inc.*, 348 U. S. 468, 481. However, we have not found, and Petitioners do not cite, any decision (even in the field where, as this Court has said, the Federal Act "leaves much to the states, though Congress has refrained from telling us how much") in which this Court did not decide the question whether the State court had, or could then exercise, jurisdiction, upon the facts alleged in the pleadings or established by the evidence in, or found by, the State court. Moreover, even a contrary holding in those cases would be a far cry from Petitioners' theory that, where, as in the case at bar, the facts alleged, proved and found in the state court clearly establish that the subject matter of the state action is in an area of labor management relations specifically ex-

cluded from the National Labor Relations Act, a state court does not have, or can not exercise, jurisdiction unless and until the NLRB shall have found and adjudged, as a matter of fact and law, that the subject matter of the state action is within an excluded area of labor management relations and within the jurisdiction of the state court. As applied to the instant case this contention of Petitioners is plainly frivolous.

Moreover, this contention of Petitioners is part and parcel of their long continued efforts to evade both state and federal jurisdiction (1) by resisting federal jurisdiction upon the ground that supervisors and their unions are excluded from the operation of the National Labor Relations act and (2) by resisting administrative or judicial state jurisdiction upon the grounds of exclusive or primary jurisdiction in the NLRB or of federal pre-emption. (R. 62, Fdg. 18.) In the instant case Petitioners are seeking to persuade this Court to lend its aid to a long continued scheme of evasion.

The disastrous consequences, which would follow from judicial sanction of Petitioners' theory, is strikingly demonstrated by the case at bar. If the Minnesota courts had not had, or could not have exercised, jurisdiction, the conduct of Petitioners would have been "entirely ungoverned." As found and held by the Minnesota Supreme Court (whose interpretation of State law is conclusive in this Court), Petitioners' conduct violated the statutes and public policy of that State. The facts alleged, proved and found in the Minnesota courts establish beyond debate that the NLRB could not have lawfully assumed or exercised jurisdiction or given any remedy. Nevertheless, if jurisdiction of the Minnesota courts could have been suspended until a futile proceeding dragged its way through the ad-

ministrative tribunal and possibly judicial review by a federal court, Respondents would have had no choice except to yield to the unlawful coercion of Petitioners; and the Minnesota courts would have been prevented from granting any effective relief. Petitioners declared their intention to picket every ship of Respondents which they could find. The losses which Respondents sustained, and would sustain, upon each ship in their fleet which was, or should become, immobilized by Petitioners' conduct, was $3,000 *a day,* exclusive of any profit. Inevitably Respondents would have had to yield to Petitioners' economic coercion which, as found and held by the Minnesota courts, violated the statute and public policy of that State; and judicial sanction of such a theory would leave Petitioners free to pursue such unlawful conduct without restraint and undeterred by any of the consequences which normally flow from, and deter, wrongful acts.

Manifestly, only the most compelling statutory language and the most unequivocal declaration of congressional intent could justify a holding which would entail such consequences. Here, however, to reach such a holding would require a court completely to disregard, and consequently to violate, the clear language used by the Congress and its unequivocally declared intent. Consequently, the doctrine of federal preemption and the doctrine of primary administrative jurisdiction are severally inapplicable and could not be used, separately or together, to reach, or to justify, such a result.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

RAYMOND T. JACKSON,
JAMES P. GARNER,
1956 Union Commerce Bldg.,
Cleveland 14, Ohio,
EDWARD T. FRIDE,
1200 Alworth Building,
Duluth 2, Minnesota,
Counsel for Respondents.

Of Counsel:
BAKER, HOSTETLER & PATTERSON,
NYE, SULLIVAN, MCMILLAN,
HANFT & HASTINGS.

APPENDIX A.

Statutes Involved.

The relevant provisions of the National Labor Relations Act as amended by the Labor Management Relations Act, 1947, are set forth below.

Act of June 23, 1947, c. 120, § 1(a) and §§ 2(3), 2(5), 2(11) and 14(a) of Title I, 61 Stat. 136, 137, 138, 151; U. S. Code, Title 29, §§ 152(3), 152(5), 152(11) and 164(a).

"AN ACT

"To amend the National Labor Relations Act, to provide additional facilities for the mediation of labor disputes affecting commerce, to equalize legal responsibilities of labor organizations and employers, and for other purposes.

* * * * *

"SECTION 1. (a) This Act may be cited as the 'Labor Management Relations Act, 1947.'

* * * * *

"TITLE I—AMENDMENT OF NATIONAL LABOR RELATIONS ACT

"SEC. 101. The National Labor Relations Act is hereby amended to read as follows:

* * * * *

" 'DEFINITIONS

" 'SEC. 2. When used in this Act—

* * * * *

" '(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, * * * but shall not include * * * any individual employed as a supervisor, * * *.

* * * * *

"'(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

* * * * *

"'(11) The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, *or* discipline other employees, *or* responsibly to direct them, *or* to adjust their grievances, *or* effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

* * * * *

"'LIMITATIONS

"'SEC. 14. (a) Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.'"

APPENDIX B.

Legislative History of Pertinent Amendments to The National Labor Relations Act Which Were Made by Title I of The Labor Management Relations Act, 1947.

A. Reports of Congressional Committees.

1. Senate Report No. 105 on S. 1126, 80th Cong., 1st Sess.

"It is natural to expect that unless this Congress takes action, management will be deprived of the undivided loyalty of its foremen. There is an inherent tendency to subordinate their interests whereever they conflict with those of the rank and file. * * *

"* * * the bill does not prevent anyone from organizing nor does it prohibit any employer from recognizing a union of foremen. It merely relieves employers who are subject to the national act free from any compulsion by this National Board or any local agency to accord to the front line of management the anomalous status of employees." (p. 5)

* * * * *

"Section 14: This is a new section which makes it clear that the amendments to the act do not prohibit supervisors from joining unions, but that it is contrary to national policy for other Federal or State agencies to compel employers who are subject to the National Board to treat supervisors as employees for the purpose of collective bargaining or organizational activity." (p. 28.)

2. House Report No. 245, H. R. 3020, 80th Cong., 1st Sess.

"The evidence before the committee showed this to be one of the most important and most critical problems. When Congress passed the Labor Act, we were

concerned, as we said in its preamble, with the welfare of 'workers' and 'wage earners', not of the boss. It was to protect workers and their unions against foremen, not to unionize foremen, that Congress passed the act." (p. 13.)

* * * * *

"So, by this bill, Congress makes clear once more what it tried to make clear when, in passing the act, it defined as an 'employer,' not an 'employee,' any person 'acting in the interest of an employer'; what it again made clear in taking up H. R. 2239 in 1943 and in dropping it when the Board decided the Maryland Drydock case, and what, for a third time, it made clear last year in passing the Case bill by a majority of about 2 to 1 and in barely falling short of enough votes to override the President's veto of that bill.

"The bill does not forbid anyone to organize. It does not forbid any employer to recognize a union of foremen. Employers who, in the past, have bargained collectively with supervisors may continue to do so. What the bill does is to say what the law always has said until the Labor Board, in the exercise of what it modestly calls its 'expertness,' changed the law: That no one, whether employer or employee, need have as his agent one who is obligated to those on the other side, or one whom, for *any* reason, he does not trust." (p. 17.)

B. Excerpts from Congressional Debates.

Statement by Senator Taft of Ohio:

"I shall try to summarize the changes which have been made. They are important. They make a substantial step forward toward the furnishing of equal bargaining power.

"The bill provides that foremen shall not be considered employees under the National Labor Relations

Act. They may form unions if they please, or join unions, but they do not have the protection of the National Labor Relations Act. They are subject to discharge for union activity, and they are generally restored to the basis which they enjoyed before the passage of the Wagner Act." 93 Cong. Rec. 3836 (1947)

No. 166

IN THE

Supreme Court of the United States

October Term, 1961

INTERLAKE STEAMSHIP COMPANY, a corporation, and PICKANDS-MATHER & Co., a co-partnership,

Respondents

v.

MARINE ENGINEERS BENEFICIAL ASSOCIATION, CHARLES LAPORTE, FRED L. BEATTY, JOHN DOE, RICHARD ROE, and MARINE ENGINEERS BENEFICIAL ASSOCIATION, LOCAL 101,

Petitioners

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA

BRIEF FOR THE PETITIONER

LEE PRESSMAN,
50 Broadway
New York City, New York

WILDERMAN, MARKOWITZ & KIRSCHNER
RICHARD H. MARKOWITZ
PAULA R. MARKOWITZ,
735 Philadelphia Saving Fund Building
Philadelphia 7, Pennsylvania

Attorneys for Petitioners

THE LEGAL INTELLIGENCER, 10 S. 37TH ST., PHILA. 4 55

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BRIEF FOR THE PETITIONERS

Opinions Below

The Memorandum of the District Court of St. Louis County, State of Minnesota (R. 17 *ff.*) is unreported. The Opinion of the Supreme Court of Minnesota (R. 45 *ff.*) is reported at 108 N.W.2d 627 (1961).

Jurisdiction

On March 30, 1961, the Supreme Court of Minnesota affirmed the issuance of an injunctive decree against picketing activity which was arguably and reasonably within the prohibitions of Section 8 of the National Labor Relations Act. 61 Stat. 141, 29 U.S.C. Section 158(b). (Appendix 22). Over such activity the National Labor

Relations Board has been invested with exclusive jurisdiction by 61 Stat. 146, 29 U.S.C. Section 160. Pursuant to 62 Stat. 929, 28 U.S.C. Sec. 1257 (3), the petitioner Marine Engineers Beneficial Association sought a writ of certiorari to the Supreme Court of Minnesota, which was granted on October 9, 1961. Petitioner now files this brief on the merits.

Statutory Provisions Involved

The statutory provisions involved in this case are Sections 2(3), 2(5), 2(11), 8(a)(3), 8(b)(2), 8(b)(4)(A) and (B) and 14(a) of the National Labor Relations Act, as amended, 61 Stat. 137, 138 140, 141, 151; 29 U.S.C. Sec. 152(3), Sec. 152(5), Sec. 152(11), Sec. 158a(3), Sec. 158(b)(2), Sec. 158(b)(4)(A) and (B) and Sec. 164.[1] These statutory provisions are set forth in the Appendix to this brief.

Question Presented

Was it not error for the state court to enjoin picketing by a union composed primarily of supervisors when such activity arguably or reasonably fell within the purview of Section 8(b) of the National Labor Relations Act and, therefore, within the exclusive jurisdicition of the National Labor Relations Board?

Statement of the Case

Respondent Interlake Steamship Company (hereinafter called "Interlake") is the owner, and respondent Pickands-Mather & Co. (hereinafter called "P-M") is the operator, of the second largest fleet of bulk cargo ships operating on the Great Lakes (R. 46). The petitioner is the Marine Engineers Beneficial Association, hereinafter called "MEBA"), its Local 101, and agents thereof. MEBA

[1] This statute is frequently referred to in this brief simply as the Act.

is a voluntary unincorporated association which admits to membership, represents and collectively bargains for licensed marine engineers employed on approximately forty to forty-five per cent of the merchant fleet operating on the Great Lakes and approximately ninety per cent of the vessels of the entire United States merchant fleet (R. 24). The MEBA did not have a collective bargaining agreement with either of the respondents, although it claimed some of their engineers as members (R. 48).

On the afternoon of November 11, 1959, Interlake's steamer Samuel Mather arrived with a cargo of coal at the Duluth, Minnesota dock of the Carnegie Dock and Fuel Company (hereinafter called "Carnegie"), and the Carnegie employees began to unload it (R. 46).

About 6:30 A.M. on November 12, 1959, MEBA stationed pickets across the only entrance road to the Carnegie dock. The pickets carried signs with the following legends:

> "PICKANDS MATHER UNFAIR TO ORGANIZED LABOR. THIS DISPUTE INVOLVES ONLY P-M. MEBA LOCAL 101, AFL-CIO."
>
> or
>
> "MEBA LOC. 101 AFL-CIO REQUEST P-M ENGINEERS TO JOIN WITH ORGANIZED LABOR TO BETTER WORKING CONDITIONS. THIS DISPUTE ONLY INVOLVES P-M." (R. 9, 10, 46, 47)

None of the pickets was an employee of Interlake or P-M or Carnegie. From the time the picketing began, the Carnegie employees refused to proceed with the unloading of the ship, and for a brief period independent truck drivers refused to cross the picket line to take delivery of coal from Carnegie (R. 10, 47).

On the night of November 12, 1959, MEBA also stationed pickets, carrying signs bearing the legends quoted above, at the entrance to the Duluth plant of the Interlake Iron Corporation, where coal was being unloaded from

another Interlake ship. None of the employees of Interlake Iron (or of either respondent) was on this picket line (R. 11, 47).

Picketing at both locations, which was at all times peaceful, was halted on November 12, 1959, by temporary restraining order of the District Court of St. Louis County (R. 47).

Subsequent to the serving of the temporary restraining order, the District Court of St. Louis County held a hearing on this matter. The trial court found that while MEBA Local 101 did not claim to represent a majority of the licensed engineers employed by respondents, it had engaged in picketing activity in order to coerce respondents to recognize MEBA Local 101 as collective bargaining agent for the licensed engineers employed on Interlake vessels, to force Interlake engineers to become members of MEBA Local 101 and to obtain a union shop agreement, in violation of certain statutes and the public policy of the State of Minnesota (R. 20-22). To the objection of MEBA that the state courts lacked jurisdicition over the subject matter of this action, because it involved activities within the scope of the National Labor Relations Act and within the exclusive jurisdiction of the National Labor Relations Board, the trial court replied that MEBA could not be deemed a labor organization, and it was seeking in the instant case to organize licensed engineers who were supervisory employees (R. 18-19) and, therefore, were excluded from the coverage of the federal statute and not within the jurisdiction of the National Labor Relations Board. Accordingly, the trial court granted a restraining order on November 18, 1959, and a temporary injunction on December 1, 1959 (R. 15-17, 48). On March 28, 1960, after final hearing, it issued a permanent injunction (R. 41, 42, 48). This decree was affirmed on March 30, 1961, by the Supreme Court of Minnesota, which again ruled against MEBA on the jurisdictional issue (R. 48-51).

Summary of Argument

We propose in the argument to review briefly the principles laid down by this Court in *Garner v. Teamsters Union*, 346 U. S. 485 (1953); *Weber v. Anheuser-Busch*, 348 U. S. 468 (1955); *San Diego Council v. Garmon*, 359 U. S. 236 (1959), and a number of other cases with respect to the preemption of jurisdiction of the state (and federal) courts in favor of the exclusive jurisdiction of the National Labor Relations Board in cases involving a clear, reasonable or arguable violation of Section 8(b) of the National Labor Relations Act.

The state courts in this case have presumed to exercise jurisdiction to enjoin picketing which arguably violated Section 8(b), in spite of the doctrine of preemption, because the picketing was engaged in by a union whose membership is composed primarily of supervisors and directed in the specific case to workers who may be held to be supervisors. The state courts reasoned that supervisors are excluded from the definition of "employees" in Section 2(3) of the Act, and hence the MEBA is not a "labor organization" as defined in Section 2(5) of the Act and, therefore, not within the purview of Section 8(b) of the Act (R. 18).

We propose to set forth the precedents on this question of whether MEBA is a "labor organization" within the meaning of Section 8(b) and to show that without opposition the National Labor Relations Board and the federal courts have held that it is such a "labor organization". We shall show that in the case of *National MEBA v. NLRB*, 274 F.2d 167 (2d Cir. 1960), the MEBA was held to be a "labor organization" within the meaning of Section 8(b) on the ground that nonsupervisors also participate in the affairs of the union. We shall show that in the case of *Schauffler v. Local 101, MEBA*, 180 F. Supp. 932 (E. D. Pa. 1960), MEBA was held to be a "labor organization" within the meaning of Section 8(b) on the ground that

it exists for the purpose of bargaining with employers about matters of employment.

We shall show that the cases relied upon by the state courts below were confined to the issue whether licensed marine engineers were supervisors and, as such, excluded from the Act. But such inquiry had no bearing on the question as to when a union may be deemed a "labor organization" for the purpose of Section 8(b) of the Act.

For these reasons we conclude that the picketing by MEBA in this case arguably and reasonably fell within the purview of Section 8(b). The doctrine of preemption fashioned by this Court in *Garner v. Teamsters Union, supra; Weber v. Anheuser-Busch, supra;* and *San Diego Council v. Garmon, supra,* is, therefore, fully applicable to the instant case and operates to divest the Minnesota state courts of jurisdiction in favor of the exclusive jurisdiction of the National Labor Relations Board.

Argument

I. In Affirming a State Court Injunction Against Picketing Whose Object Has Been Made An Unfair Labor Practice by a Federal Statute Which Invests a Federal Agency With Exclusive Jurisdiction to Pass on Such Conduct, the Decision of the Supreme Court of the State of Minnesota Conflicts With Recent Decisions of This Court.

Recent decisions of the United States Supreme Court have enunciated the doctrines of preemption which control the instant case. The decision of the Supreme Court of Minnesota was in plain derogation of those pronouncements. This Court has stated these principles:

> (1) A state court may not enjoin peaceful picketing whose object has been made an unfair labor practice under Section 8 of the National Labor Relations Act, which invests the National Labor Relations Board with exclusive jurisdiction to pass on such conduct.

Garner v. Teamsters Union, 346 U. S. 485 (1953);

(2) Even if an unfair labor practice is not clearly involved in such peaceful picketing, ". . . where the facts reasonably bring the controversy within the sections prohibiting these practices, . . . the state court must decline jurisdiction in deference to the tribunal which Congress has selected for determining such issues in the first instance." *Weber v. Anheuser-Busch*, 348 U. S. 468, 481 (1955);

(3) "When an activity is arguably subject to . . . Section 8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted." *San Diego Council v. Garmon*, 359 U. S. 236, 245 (1959).

Applying these criteria to the facts found by the trial court and adopted by the Minnesota Supreme Court, we can only conclude that the activity of the petitioner MEBA was at least "arguably subject to" or "reasonably within" two subsections of Section 8(b) of the National Labor Relations Act. The trial court found as facts, and the Minnesota Supreme Court specifically adopted its findings, that

"16. The further purpose and objective of defendants' picketing and activities as described above was to coerce and induce plaintiffs to force, compel or induce engineers employed on Interlake vessels to become members of MEBA Local 101 and was for the purpose of injuring plaintiffs in their business because of their refusal to in any way interfere with the rights of engineers employed on Interlake vessels to join or not to join said defendant organization.

"17. The further purpose and objective of defendants' picketing and activities as described above was to

coerce and intimidate plaintiffs in order to secure recognition from plaintiffs of MEBA Local 101 as the collective bargaining agent for the licensed engineers employed on Interlake vessels." (R. 12, 33, 52).

If these were the facts, then it followed from them that this conduct was "arguably subject to" or "reasonably within" the prohibition of Section 8(b)(2), which makes it an unfair labor practice for a "labor organization . . . to cause . . . an employer to discriminate against an employee in violation of sub-section (a)(3)," which in turn makes it an unfair labor practice for an employer to encourage membership in any labor organization.

The trial court found as facts, and the Minnesota Supreme Court adopted its findings, that:

"6. From the time of the commencement of this picketing, the employees of the Carnegie Dock & Fuel Company, although having entered the premises of their employer despite such picketing and having performed other duties of their employment, have failed and refused to perform any services whatsoever in connection with the unloading of the Samuel Mather although ordered to do so on numerous occasions.

"7. As a further result of such picketing, certain independent truck drivers failed and refused to enter the dock premises to take delivery of coal from the dock company and left their vehicles parked on the single road entrance . . . to the dock for approximately two hours on the morning of November 12, 1959.

* * * * *

"9. The picketing at the dock company premises continued until the service of the temporary restraining order issued by this Court in the afternoon of November 12, 1959. Despite the absence of formal picketing at the dock company's premises since that time, the

dock company employees have continued to refuse to unload the Samuel Mather." (R. 10, 30, 31, 47)

Again the findings of the state courts placed this conduct arguably or reasonably within the prohibition of the federal statute. Section 8(b)(4) of the Act outlaws the secondary boycott, that is, the inducement of the employees of a neutral employer, by picketing or otherwise, to engage in a strike or to refuse to perform services, where an object thereof is to force one person to cease doing business with another. The state court's findings that employees of Carnegie Dock and Fuel Company, a neutral employer, were induced by the picketing not to perform services for Interlake indicated a violation of Section 8(b)(4).

The state courts were not unaware of the aforementioned decisions of this Court, and, accordingly, they recognized that this case involves a problem in the law of preemption. Both the trial court and the Minnesota Supreme Court grappled with the problem to a limited extent, and both concluded (untenably as it turns out) that in this situation the doctrine of preemption does not apply. We shall point out the weakness in their position and show why the doctrine of preemption does operate in the instant case.

II. Even Though MEBA Was Primarily or Almost Exclusively Composed of Members Who Performed Certain Supervisory Functions, the MEBA Still "Arguably" and "Reasonably" Constituted a "Labor Organization" Which May Commit an Unfair Labor Practice Within the Meaning of Section 8(b) of the Act.

In the opinion of the trial court the record "is clear that its [MEBA] membership is composed primarily and almost exclusively of supervisors",[2] (R. 18) and it so found

[2] Section 2(11): "The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or dis-

(R. 11, 13, 32, 34). The Supreme Court of Minnesota accepted such findings (R. 50). In view of the exclusion of "supervisors" from the definition of "employee" in Section 2(3) of the Act,[3] the state courts leaped to the conclusion that as a union MEBA is thereby specifically excluded from Section 8(b) of the Act, which proscribes certain activities by labor organizations (R. 13-14, 34, 49-51).

The state courts seemed to be oblivious of the fact that the language of Section 8(b) does not speak of a "supervisor" or even of an "employee" but of a "labor organization or its agents:" "It shall be an unfair labor practice for a labor organization or its agents . . ." Thus, the real question in the instant case is not whether some or most of MEBA members should be classified as supervisors or as employees or sometimes as one and sometimes as the other, nor whether the marine engineers employed by Interlake were supervisors or not, but whether MEBA itself as an entity could arguably or reasonably be held to be a "labor organization" [4] for the purpose of Section 8(b).

The state courts also seemed to be unaware of, or unconcerned with, the fact that their reasoning in the instant case finds no support in the decisions of the National Labor Relations Board and other (federal) courts which have been faced with the same question of whether MEBA

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cipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

[3] Section 2(3): "The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, . . . but shall not include . . . any individual employed as a supervisor. . . ."

[4] Section 2(5): "The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

is a "labor organization" within the meaning of Section 8(b) of the National Labor Relations Act. As we shall demonstrate herein, the Labor Board and the other courts which have been faced with this question have held that MEBA is a "labor organization" subject to the prohibitions of Section 8(b). One decision of the National Labor Relations Board and one federal court case have been cited in support of the decision of the Minnesota courts. We shall presently demonstrate that neither of them is authority for the proposition that MEBA is not a "labor organization" subject to the prohibitions of Section 8(b) of the Act.

The first of the cases in which MEBA has been found to be a "labor organization" within the meaning of Section 8(b) of the National Labor Relations Act was *National MEBA v. NLRB*, 274 F.2d 167 (2d Cir. 1960), in which the court granted a petition for enforcement of a cease and desist order issued by the Labor Board against MEBA and other unions for violations of Sections 8(b)(4)(A) and (B) of the Act.

It is true that in that proceeding, being the first to involve the question, MEBA contended that it should not be held to be a "labor organization" within the prohibition of Section 8(b) of the Act, since the predominant number of its members were supervisors and the personnel who were being organized in the specific labor dispute were supervisors. However, this position was specifically rejected by the court.[5] The court upheld the Labor Board's interpretation that a union need only embrace two members who are "employees" as distinguished from "supervisors" to be a "labor organization", regardless of the status of its remaining members. The court also held the evidence sufficient to warrant the Board in finding that MEBA was a union which included employees as well as

[5] The argument was also rejected by the Labor Board which said: "We conclude that some of the engineers whom MEBA admits into membership are not supervisors and therefore that MEBA is a labor organization as defined in the Act." *National Maritime Union, et al.*, 121 NLRB 208, 210 (1958).

supervisors and, therefore, was a "labor organization" within the meaning of Section 8(b).

In determining whether MEBA was a "labor organization", Judge Friendly looked at the entire composition of the union, local and national, to see whether any employees participated in its membership. He noted (1) that the constitution of MEBA made eligible for membership marine engineers so broadly defined as to include persons not engaged in supervisory duties; (2) that in the case under decision the MEBA had sought to represent three engineers, two whose status was clearly supervisory and a third whose status was debatable; and (3) that in a prior case the MEBA had sought to represent two non-supervisory engineers: "an attempt by a union to act on behalf of non-supervisory workers tends to show that the union is one in which 'employees participate'. . . ." (274 F. 2d at 173.) [6]

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[6] There was also discussion in Judge Friendly's opinion as to the effect of an admission by MEBA that it was a "labor organization" in a previous case before the Labor Board. Judge Friendly concluded that neither the admission nor the decision based upon it were binding in the determination of a subsequent case. We point this out because there is in the record of the instant case (R. 43) an affidavit of Herbert L. Daggett, dated October 9, 1957, over two years prior to the events of the instant case, which was taken in connection with the litigation of another case. The trial court refers to this affidavit as admitting that MEBA was not a "labor organidation" and concludes that MEBA was bound by its admissions (R. 19). The affidavit as it appears in the record nowhere conceded that MEBA was not a labor organization; it simply described the supervisory functions of MEBA members. In any case the affidavit should not have been entitled to any weight since it was not taken in connection with the instant case.

The trial court might also have relied on admissions by MEBA in the instant case "that it could not secure collective bargaining rights for Interlake's licensed engineers through a N.L.R.B. election." (R. 19). This "admission" was an apparent reference to the *Globe* case, *infra*, at page 15, which did not involve the MEBA and whose inapplicability as an election case to a determination of a Section 8(b) question is discussed *infra* at pages 15, 16.

The points noted by Judge Friendly as indicating employee participation in the Second Circuit case apply with equal, if not greater, force to the instant case: (1) the national constitution was the same in both cases and (2) in at least two prior cases, the Second Circuit case and the one referred to therein, MEBA sought to represent non-supervisory engineers, tending to show that it encouraged employee participation. Finally, as a third point indicating some degree of employee participation in the affairs of MEBA, we cite the language of the trial judge that MEBA membership "is composed *primarily* and *almost* exclusively of supervisors" (Emphasis supplied) (R. 18). The difference between "almost exclusively" and "exclusively" might well be the difference between a "labor organization" and a "non-labor organization" in this kind of a case, as the Labor Board and the opinion of Judge Friendly demonstrated.[7]

For all these reasons it can reasonably be argued that MEBA is a "labor organization" within the meaning of Section 8(b) and that its conduct in the instant case falls within the prohibitions of Section 8(b)(2) and 8(b)(4)-(A) and (B). Consequently, this case is controlled by the doctrines of preemption announced in *Garner v. Teamsters Union, supra; Weber v. Anheuser-Busch, supra;* and *San Diego Council v. Garmon, supra.*

A second case in which MEBA has been held subject to the prohibitions of Section 8(b) of the Act was *Schauffler v. Local 101, MEBA*, 180 F. Supp. 932 (E. D. Pa. 1960). In this case Local 101 of the MEBA was held to be a "labor organization" for the purposes of a proceeding in which the Labor Board sought a temporary injunction

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[7] *Cf. NLRB v. Budd Mfg. Co.*, 169 F. 2d 571, 576 (6th Cir. 1948), *cert. den.* 335 U. S. 908 (1949), where a foremen's association which admitted to membership both foremen who were supervisors and employees who were not supervisors was held to be a "labor organization" within the meaning of Section 2(5) of the Act, since such Section does not require that the organization be composed exclusively of employees.

restraining the union from violating the secondary boycott provisions of Sections 8(b)(4)(i) and (ii)(B) of the Act, on the ground that the union was "an organization which participates in and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." (180 F. Supp. at 933.)

The District Court's concern with the organizational purposes of MEBA suggests another ground on the basis of which it may be reasonably argued that MEBA is a "labor organization" within the meaning of Section 8(b). According to this argument, if a union is obviously preoccupied with matters pertaining to the essence of the *employment* relationship, it ought to be classified as an employee-organization vis-a-vis the employer and hence as a "labor organization" within the meaning of the Act. Although individual members might well be considered supervisors with respect to their individual duties, when they band together to form an organization to deal with their employers concerning the crucial problems of the employment relationship—grievances, wages, hours and conditions—they collectively constitute a group of employees concerned with the classic problems of employees. As such, they constitute a "labor organization" just as much as any other union of employees.

In the instant case the MEBA was preoccupied with the concerns of the employment relationship. It called to the Pickands-Mathers engineers (in the language of its placards) "to join with organized labor to better working conditions" (R. 9-10, 30). These picket signs constituted an appeal from one group of organized employees to another group of unorganized employees to join with it in a fight against their common enemy—the nonunion employer who threatened the working conditions of all of them. If this kind of approach is taken to the instant situation, it leads to the conclusion that the MEBA is a "labor organization". At the very least, this would seem to be an approach which renders the picketing in question *reasonably* or *arguably*

subject to Section 8(b) of the Act within the meaning of *Weber v. Anheuser-Busch*, *supra*, and *San Diego Council v. Garmon*, *supra*.

Two cases have been cited heretofore in the course of this proceeding[8] as authority for holding that MEBA is not subject to the National Labor Relations Act. The first of these was a Board decision, *Globe Steamship Co. and Great Lakes Engineers Brotherhood*, 85 NLRB 475 (1949), in which the Board refused to conduct an election among marine engineers who performed supervisory duties to enable them to vote on membership in a union other than MEBA:

> ". . . we find that assistant engineers are supervisors as defined in the Act. We conclude, therefore, that no question affecting commerce exists concerning the representation of employees of the Employers, within the meaning of Section 9(c)(1) . . . of the Act." (85 NLRB at 481.)

The fact that it was a maritime union which would have been on the ballot was immaterial to the decision. Even if the United Steel Workers or the United Automobile Workers had petitioned for an election, the decision would have been the same, despite the fact that there has never been any question that these unions are subject to the provisions of the National Labor Relations Act. In other words, the *Globe* decision had nothing to say on whether the union involved (which was a maritime union other than MEBA) was a "labor organization" subject to the prohibitions of Section 8(b); it simply said that the Board would not lend its auspices, under Section 9 of the Act, to the conduct of an election among supervisors to determine their collective bargaining representative.

In any event, it has been suggested by Judge Friendly in *National MEBA v. NLRB*, *supra*, at 173, that when the

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[8] See Record, pp. 18-19 and Brief of Respondents in Opposition to Petition for Certiorari, pp. 20-21.

issue is whether an election must be held or who may vote in it, the supervisory identity of the employees sought to be organized or represented may justifiably be made the decisive factor. Judge Friendly pointed out that questions of election are affected by Section 14 of the Act, which states that no employer "shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining"—"a provision designed to change the result reached in *Packard Motor Car Co. v. NLRB*, 330 U. S. 485 (1947)"[9]—whereas when the issue is whether a union is a "labor organization" and, therefore, may be guilty of an unfair labor practice, the question arises "under different sections of the statute, with different wording and purpose." (274 F. 2d at 173.) In short, election cases are a law unto themselves, and their holdings cannot be carried over into the determination of whether a union is a "labor organization" under Section 8(b).[10]

Even so, the Board has not always refused to grant an election among marine engineers, even where the petitioning union was composed primarily of supervisors. In *Graham Transportation Co. and Brotherhood of Marine*

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[9] In this case it was held that foremen were entitled to the rights of self-organization, collective bargaining and the other concerted activities assured to employees generally, and that the Company had to bargain with them.

[10] Neither the trial court nor the Supreme Court of Minnesota understood this distinction. The trial court was impressed by the fact that MEBA had conceded in the instant case "that it could not secure collective bargaining rights for Interlake's licensed engineers through an N.L.R.B. election". The trial court concluded from this that MEBA's "activities which plaintiffs seek to enjoin are, therefore, completely excluded from the Act and from the Board's jurisdiction, and the State court jurisdiction remains unimpaired." (R. 19). The Supreme Court of Minnesota concluded that it had jurisdiction to enjoin an unfair labor practice "when Congress expressly excluded supervisory employees from the Federal Act and left it clearly up to management to determine whether it would recognize and deal with the union as a bargaining agent for such employees. . . ." (R. 51).

Engineers, 124 NLRB 960 (1959), the Board directed an election, finding that none of the employer's engineers were supervisory employees and, therefore, that the union therein involved was seeking to represent individuals who were "employees" within the meaning of Section 2(3) of the Act. It is not a requirement of the Act, said the Board, that a "labor organization" be comprised exclusively of "employees".

The other case, which has been put forth as holding that "MEBA is not a labor organization within the meaning of the N.L.R.A. and that the Federal courts have no jurisdiction over it . . ." (R. 18), was *Bull Steamship Co. v. National MEBA*, 250 F. 2d 332 (2d Cir. 1957). But this case did not so hold. Bull Steamship Co. brought suit against MEBA for an injunction and for damages for alleged breach of a collective bargaining agreement under Section 301(a) of the Labor Management Relations Act of 1947.[11] The trial court issued an extensive preliminary injunction restraining a strike then in progress, from which the union appealed.

The Court of Appeals reversed and dismissed the injunction order on the ground the District Court lacked jurisdiction under Section 301(a), since the collective bargaining agreement for breach of which the suit was initiated covered only "supervisors". Judge Clark stated:

> "The substantial question thus resolves itself into one of fact: Are the members of MEBA covered by the collective bargaining contract with Bull 'supervisors' within the definition of the Act? If they are 'supervisors' then MEBA is not a 'labor organization representing employees' for the purposes of this action. This result follows even if some members of MEBA outside of this bargaining unit are 'employees'.

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[11] Sec. 301(a): "Suits for violations of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act . . . may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

> ". . . Here . . . it appears likely that the Court below has no jurisdiction under §301 of the Taft Hartley Act, 29 USC §185 for the supervisory status of the MEBA employees of Bull is well established in the pleadings, affidavits and briefs below." (250 F. 2d at 336, 338.)

In effect, the issue in such case was whether the specific collective bargaining agreement covered "employees" so as to bring it within Section 301(a). The decision in no way determined what constituted a "labor organization" for the purpose of Section 8(b) of the Act.

We respectfully submit that on the basis of the applicable cases, sufficient Labor Board and federal court authority has been shown to establish that MEBA is "reasonably within" or at least "arguably subject to" Section 8(b) of the Act. Under the doctrine of preemption laid down by this Court, this should suffice to divest the state courts of jurisdiction over the instant case in order to permit the National Labor Relations Board to adjudicate in a proper proceeding brought before it.

The theme which runs through all of this Court's decisions on the subject of preemption is its concern for the legislative purpose of establishing a uniform national policy in the handling of disputes in the labor-management field. The exclusive instrument established by Congress to carry out such policy is the National Labor Relations Board. In the instant case the Minnesota Supreme Court has participated in the formulation of a legal determination in this field by finding that MEBA is not a "labor organization" within the meaning of the Act. Its decision raises the distinct possibility of conflict between its holding and the holding of the National Labor Relations Board. Thus, we have here an intolerable situation: a state court has reached one conclusion and the Board may reach, and indeed has reached, the opposite conclusion in an area as to which this Court has said uniformity is essential.[12]

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[12] *Cf. Incres Steamship Company v. International Maritime Workers Union*, 10 N. Y. 2d 218 (Ct. of App. 1961), cert. granted, U. S. (Oct. Term 1961, No. 469).

The state court has in effect held that in this case MEBA is not a "labor organization" within the meaning of the federal act. This holding squarely conflicts with the result reached by the Labor Board and by the Court of Appeals for the Second Circuit. The elimination of such a dichotomy and the avoidance of a conflict of remedies is part of the rationale behind *Garner*, *Weber* and *Garmon*. The only way uniformity of treatment can be assured in this area is for this Court to invoke the doctrine that the jurisdiction of the state court has been preempted in favor of the exclusive jurisdiction of the National Labor Relations Board.

Conclusion

The doctrine of preemption laid down by this Court in *Garner v. Teamsters Union*, *supra*; *Weber v. Anheuser-Busch*, *supra*; and *San Diego Council v. Garmon*, *supra*, is obviously not in dispute in this case. Nor do we understand that there is any dispute that the activity of MEBA in the instant case would, if committed by an unquestionable "labor organization", be deemed reasonably to fall within Section 8(b) of the Act and under the exclusive jurisdiction of the National Labor Relations Board.

What is in dispute is whether the doctrine of preemption applies in the instant case because of the contested status of MEBA as a "labor organization". Under the rule enumerated by this Court in *Weber v. Anheuser-Busch*, *supra*, at 481:

> Even if an unfair labor practice is not clearly involved in peaceful picketing, ". . . where the facts reasonably bring the controversy within the sections prohibiting these practices, . . . the state court must decline jurisdiction in deference to the tribunal which Congress has selected for determining such issues in the first instance.";

and as reinforced in *San Diego Council v. Garmon*, *supra*, at 245:

> "When an activity is arguably subject to . . . Section 8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted;",

we submit that the doctrine of preemption does apply here.

The issue before this Court is not whether the state courts made a correct determination on the status of MEBA as a "labor organization". The narrow question is whether MEBA is "arguably subject to" or "reasonably within" the provisions of Section 8(b) of the Act. If answered in the affirmative, the subject matter rests in the exclusive jurisdiction of the National Labor Relations Board, and the Minnesota state courts, in presuming to determine the question, usurped the function reserved to the Board by Congress.

We submit the facts in the case and the prevailing applicable decisions of the National Labor Relations Board and the federal courts amply justify the invocation of the doctrine of preemption to permit the Labor Board to exercise its proper jurisdiction. We are, therefore, asking this Court to reverse the judgment of the Supreme Court of Minnesota on the ground that it was entered without jurisdiction and to order the proceeding in the state court to be dismissed for lack of jurisdiction.

Respectfully submitted,

LEE PRESSMAN,
50 Broadway
New York City, New York
WILDERMAN, MARKOWITZ & KIRSCHNER
RICHARD H. MARKOWITZ
PAULA R. MARKOWITZ,
735 Philadelphia Saving Fund Building
Philadelphia 7, Pennsylvania
Attorneys for Petitioners

Appendix

Statutory Provisions Involved

Following are the pertinent provisions of the National Labor Relations Act, as amended:[13]

"Sec. 2. When used in this Act—

(3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, . . . but shall not include . . . any individual employed as a supervisor. . . .

"(5) The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

"(11) The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

"Sec. 8. (a) It shall be an unfair labor practice for an employer—

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[13] The changes incorporated by the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, have not been included here, because the 1959 amendments became effective after the occurrence of the operative events of the instant case. In any case, the 1959 amendments would not have affected the decision in this case in any particular.

"(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: . . .

"Sec. 8. (b) It shall be an unfair labor practice for a labor organization or its agents—

"(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) . . .

(4) to engage in, or to induce or encourage the employees of any employer to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services where an object thereof is:

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

(B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees.

. . .

"Sec. 14. (a) Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining."

In the Supreme Court of the United States

OCTOBER TERM, 1961.

No. 166.

MARINE ENGINEERS BENEFICIAL ASSOCIATION, CHARLES LAPORTE, FRED L. BEATTY, JOHN DOE, RICHARD ROE, AND MARINE ENGINEERS BENEFICIAL ASSOCIATION, LOCAL 101,

Petitioners,

v.

INTERLAKE STEAMSHIP COMPANY, a corporation,

and

PICKANDS-MATHER & CO., a co-partnership,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

BRIEF FOR RESPONDENTS.

RAYMOND T. JACKSON,
JAMES P. GARNER,
1956 Union Commerce Bldg.,
Cleveland 14, Ohio,

EDWARD T. FRIDE,
1200 Alworth Building,
Duluth 2, Minnesota,
Counsel for Respondents.

Of Counsel:

BAKER, HOSTETLER & PATTERSON,

NYE, SULLIVAN, McMILLAN,
HANFT & HASTINGS.

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OPINIONS BELOW.

The Memorandum of the District Court of St. Louis County, State of Minnesota (R. 17-26) is unreported. The Opinion of the Supreme Court of Minnesota (R. 45-61) has not been officially reported but is reported at 108 N. W. 2d 627 (1961).

JURISDICTION.

The petition for a writ of certiorari to review the decision of the Supreme Court of Minnesota was filed within the time prescribed by 28 U. S. C. 2101(c). Petitioners severally claim immunity from the laws of the State of

Minnesota and from the jurisdiction of its courts. Consequently, this Court has jurisdiction under paragraph (3) of Section 1257, Title 28, United States Code.

STATUTES INVOLVED.

Sections 2(3), 2(5), 2(11) and 14(a) of the National Labor Relations Act[1] as amended by the Labor Management Relations Act, 1947; Act of June 23, 1947, c. 120, Title I, 61 Stat. 137, 138, 151; 29 U. S. C. 152(3), 152(5), 152(11), 164(a). The relevant provisions of the foregoing statutes are printed in Appendix A to this brief.

Petitioners' assertion that Sections 8(a)(3), 8(b)(2) and 8(b)(4)(A), (B) of the National Labor Relations Act, as amended are involved (Pet. Br. 2) is, we respectfully submit, predicated upon a misconception of the question presented.

QUESTION PRESENTED.

Whether the courts of the State of Minnesota had, or could exercise, jurisdiction in a case which, upon the allegations of the complaint and upon the facts established by the evidence and found by the Minnesota courts, involved an area of labor relations (i.e., relations between supervisors and their employers) which the Congress expressly excluded from the operation of the National Labor Relations Act, and from the jurisdiction of the National Labor Relations Board, by amendments made to that Act in Title I of the Labor Management Relations Act, 1947.

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[1] In this Brief (a) the following abbreviations are sometimes used:

National Labor Relations Act	NLRA
National Labor Relations Board	NLRB
Petitioners' Brief	Pet. Br.
Findings	Fdg.

and (b) all emphasis is supplied unless otherwise expressly stated.

STATEMENT OF THE CASE.[2]

Respondents, Interlake Steamship Company (a corporation hereinafter called "Interlake") is the owner and Pickands-Mather & Co. (a partnership hereinafter called P-M) is the operator of a fleet of bulk cargo vessels which transports coal, iron ore and other bulk commodities in interstate and foreign commerce on the Great Lakes. (R. 29.) Petitioner, Marine Engineers Beneficial Association, Local 101 (hereinafter called "MEBA" or "Local 101") is a voluntary unincorporated association which admits to membership licensed marine engineers employed on commercial vessels operating on the Great Lakes. (R. 29.) While Petitioner, National MEBA, was also joined as a defendant, the activity or conduct, which constituted the

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[2] Petitioners' Statement of the Case (Pet. Br. 2-4) does not cite, but wholly ignores, the amended and ultimate findings of fact which the trial court entered on March 16, 1960 after final hearing (R. 29-34) and includes assertions of alleged fact which are not supported by, but are contrary to, said findings. As support for such erroneous assertions of alleged fact, Petitioners cite, and in some instances also misstate or distort, (1) the Memorandum filed by the trial court on December 1, 1959 in connection with the preliminary hearing on the motion for a temporary injunction (R. 17-24); (2) a statement made by Respondents' counsel at said preliminary hearing which did not even constitute evidence except insofar as it contained admissions against interest (R. 24-6); and (3) two or three general statements appearing in the opinion of the Supreme Court of Minnesota as matters of background or in examining the parties' respective contentions (pp. 45-61).

Petitioners also improperly create confusion by using record citations to the *preliminary findings* entered *December 1, 1959*, on the motion for a temporary injunction (R. 8-13) to support *three sentences* in their Statement (Pet. Br. part of last 2 record citations on page 3 and of 1st record citation on page 4) instead of citations to the amended findings entered *March 16, 1960* after final hearing (R. 29-34).

If there is any inconsistency between the documents so cited by Petitioners and the final amended findings of the trial court, the latter obviously control. *Stone v. United States*, 164 U. S. 380, 383; *Fleischmann Co. v. United States*, 270 U. S. 349, 355; *United States v. Shoshone Tribe*, 304 U. S. 111, 115.

subject matter of the Minnesota case, was carried on by MEBA, Local 101. (R. 30-3; Fdgs. 5, 8, 12, 15, 16, 17.)

On November 11, 1959 Interlake's steamship Samuel Mather arrived at the dock of the Carnegie Dock & Fuel Company (hereinafter called "Carnegie") at Duluth, Minnesota, with a cargo of coal to be unloaded at the Carnegie Dock. The Carnegie employees, who commenced to unload the vessel shortly after its arrival, would ordinarily have completed such unloading in about 14 hours. (R. 30, Fdg. 4.)

About 6:30 A. M. on November 12, MEBA Local 101 caused five or six individuals to walk back and forth across the sole entrance to the Carnegie Dock (a private road) carrying signs which read:

> "PICKANDS MATHER UNFAIR TO ORGANIZED LABOR. THIS DISPUTE INVOLVES ONLY P-M. MEBA LOCAL 101, AFL-CIO."
>
> or
>
> "MEBA LOC. 101 AFL-CIO REQUEST P-M ENGINEERS TO JOIN WITH ORGANIZED LABOR TO BETTER WORKING CONDITIONS. THIS DISPUTE ONLY INVOLVES P-M." (R. 30, Fdg. 4.)

From the time when the foregoing picketing began the Carnegie employees (who had entered the Carnegie premises and performed other duties for their employer notwithstanding such picketing) refused to carry out repeated orders to proceed with the unloading of the Samuel Mather and, for approximately two hours, independent truck drivers refused to cross the picket line to take delivery of coal from Carnegie. (R. 30, Fdgs. 6-7.)

On the morning of November 12, 1959 Petitioner LaPorte (agent and business representative of MEBA Local 101, R. 29), stated at or near the picket line that MEBA

Local 101 intended to picket all Interlake vessels which it could locate in the Duluth Harbor. (R. 31, Fdg. 8.)

After service of a temporary restraining order on the afternoon of November 12, 1959, formal picketing of the Carnegie premises was discontinued. However, the Carnegie employees continued their refusal to unload the Samuel Mather until some time after March 16, 1960 when the trial court, after a hearing on the merits, made and entered its ultimate findings and conclusions (R. 29, 34) and entered its order for a temporary injunction. (R. 31, Fdg. 10; R. 36.)

On the morning of November 15, 1959, Interlake Steamship Pickands arrived at Duluth with a cargo of coal for unloading at the Carnegie dock, which did not have facilities to unload more than one vessel at a time. Consequently, the Steamship Pickands was compelled to ride at anchor outside the harbor and wait for the unloading of the Samuel Mather (R. 31, Fdg. 10) which, as above noted, did not occur until some time after issuance of the temporary injunction.

About 11:00 P. M. on November 12, 1959, MEBA Local 101 picketed the entrance to the Duluth Plant of Interlake Iron Corporation where coal was being unloaded for use at that plant from Interlake's Steamship Mills. However, the picketing at that plant ceased approximately one hour after service of the temporary restraining order on said pickets; and none of the employees of Interlake Iron Corporation ceased work during such temporary picketing. (R. 31, Fdg. 11.)

Prior to commencement of the picketing at the Carnegie Dock on November 12, 1959, MEBA Local 101 had not communicated with, or made any demand or request whatsoever of, either Respondent. (R. 31, Fdg. 12.)

By thus preventing the steamships Samuel Mather and Pickands from unloading and reloading in regular

course, MEBA Local 101, and those acting in concert with it, inflicted a loss of $6000.00 a day, exclusive of profits, on Respondents; and if MEBA Local 101 carried out its threat to picket all Interlake vessels coming into Duluth harbor (R. 31, Fdg. 8), the result would be to interfere with the operations of a majority of Interlake's vessels. (R. 32, Fdg. 14.)

The duties, responsibilities and authority of all engineers and assistant engineers employed on Interlake vessels are stated in Finding 13 (R. 32), which reads:

> "13. All engineers and assistant engineers employed on Interlake vessels stand watches during which they are in charge of and responsible for the operation and condition of the vessel's propulsion mechanism and responsibly direct, control and supervise the work of the firemen, oilers and coal passers on duty during such watch; they hire, fire, transfer and change the status of and discipline the persons working under them and have authority to and do make effective recommendations respecting the employment and tenure of employment of the people working under them; they handle initially grievances of the employees who are subject to their supervision; the exercise of authority by the engineers and assistant engineers requires the use of independent judgment and discretion; and all such engineers are required to be licensed by the United States Coast Guard." (R. 32, Fdg. 13.)

Upon the foregoing facts the Minnesota courts concluded, as a matter of law, that the engineers and assistant engineers employed on all of Respondents' ships are "supervisors" as defined in Section 2(11) of the National Labor Relations Act, as amended. (R. 34, Conc. 2.)

The purposes and objectives of the picketing and activities of MEBA Local 101 were (1) to coerce Respondents, by injuring them in their business, to enter into an

agreement or understanding with MEBA Local 101 under which Respondents would require every licensed engineer hired after a specified date to become a member of Local 101 within 30 days after his employment as a condition of continued employment, (2) to coerce Respondents into interfering with the rights of Interlake engineers to join or not to join Local 101 by exercising force or compulsion on said engineers to become members of Local 101 and (3) to coerce and intimidate Respondents into recognizing MEBA Local 101 as the collective bargaining agent for the licensed engineers employed on Interlake vessels. (R. 32-3, Fdgs. 15-17.) Neither National MEBA nor Local 101 claimed to represent a majority of Interlake engineers or to be their authorized collective bargaining representative. (R. 33, Fdg. 19.) The activities of Petitioners did not include the use of violence or threats of violence. (R. 33, Fdg. 22.)

As conclusions of law the trial court held that all of the engineers and assistant engineers employed on Interlake vessels are "supervisors" as defined in the National Labor Relation Act, as amended; that the activities of Petitioner MEBA Local 101 and its associates set forth in the findings are excluded from the operation of the National Labor Relations Act, as amended, and from the jurisdiction of the National Labor Relations Board; that the activities of Petitioners violated the statutes and public policy of the State of Minnesota in the respects stated, and that the Minnesota Anti-Injunction Act was inapplicable and did not bar injunctive relief. (R. 34-5.)

The trial court granted a temporary restraining order on November 12, 1959, issued a temporary injunction on December 1, 1959 and issued a permanent injunction on March 28, 1960. (R. 15, 17, 41-2.) On March 30, 1961 the Supreme Court of Minnesota unanimously affirmed the decree of permanent injunction. (R. 46, 61.)

SUMMARY OF ARGUMENT.

A. As courts of general jurisdiction, the Minnesota courts had the power, and the duty, to decide all questions of fact and law upon which their jurisdiction, or their right to exercise jurisdiction, depended. Moreover, Petitioners do not, and could not successfully, challenge any of the findings below. While National MEBA was joined as a party defendant, the activity or conduct, which constituted the subject matter of the instant case, was carried on by MEBA Local 101. Nothing in the record showed that MEBA Local 101 admitted any non-supervisor employees to membership. All engineers and assistant engineers employed on Respondents' ships were supervisors as defined in Section 2(11) of the NLRA as amended. The picketing, which was carried on by MEBA Local 101, was directed exclusively (1) to coercing Respondents into exercising force or compulsion on their engineers and assistant engineers to become members of Local 101, and (2) to coercing and intimidating Respondents into entering into a "union shop" agreement with MEBA Local 101 under which Respondents would recognize MEBA Local 101 as the collective bargaining agent for the supervisor engineers employed on Respondents' ships.

B. The sole issues now before this Court are whether, upon the undisputed facts established by the findings below, the Minnesota courts correctly held, *first*, that all engineers and assistant engineers employed on Respondents' ships were supervisors within the meaning of Section 2(11) of the NLRA as amended; *second*, that the picketing, which was being carried on by MEBA Local 101 and was directed exclusively to labor relations between Respondents and their supervisor engineers, fell within an area of labor relations which the Congress had expressly excluded from the operation of NLRA as amended and

hence, from the jurisdiction of the NLRB; and *third*, that they (the Minnesota courts) had, and could properly exercise, jurisdiction to enjoin MEBA Local 101 and those acting in concert with it, from a continuing violation of the statutes in the public policy of the State of Minnesota. Each of the foregoing questions is purely a question of law.

C. In 1957, promptly after the decision of this Court in *Packard Co. v. Labor Board*, 330 U. S. 485, the Congress amended Sections 2(3), 2(5) and 2(11) of, and added Section 14(a) to, the NLRA of 1935 (the Wagner Act). The express and declared purpose of Congress in amending the foregoing Sections and in adding Section 14(a) was to exclude labor relations between supervisors and their employees from the operation of the NLRA and from the jurisdiction of the NLRB. The intent of Congress so to do is emphasized and made inescapably clear by the legislative history of the foregoing amendments and of Section 14(a).

D. A long settled principle for construing our dual constitutional system is that, when Congress exercises its paramount authority under the commerce power over a particular subject, the States are not barred from exercising their police power over the same subject in ways which do not conflict, and are not inconsistent, with the federal legislation. To bar the States from exercising power to that extent, congressional intent so to do must be clearly manifested and may not be based upon implication.

However, when Congress, in exercising its paramount authority under the commerce power to regulate a particular subject, expressly or affirmatively excludes part of that subject from federal regulation, the authority of the States to exercise their police power over the excluded part of the subject derives not only from the foregoing principle of constitutional interpretation but also is af-

firmatively authorized by the Congress. Manifestly, the doctrine of federal pre-emption cannot be invoked to bar the exercise of power by the States or their courts over part of a subject which the Congress has expressly excluded from federal regulation and generally restored to the States.

E. The doctrine of primary administrative jurisdiction, properly construed and applied, is merely part of the doctrine of federal pre-emption. It rests upon the hypotheses that, when Congress (with respect to a particular subject) (1) has prescribed (a) comprehensive substantive regulations, (b) specific remedies for their violation and (c) specific procedure for enforcing such remedies and (2) has created a special tribunal to administer the congressional legislative scheme subject only to a prescribed and limited judicial review, Congress intended to bar, and has barred, both federal and State courts from exercising original jurisdiction. Manifestly, however, the doctrine of primary administrative jurisdiction cannot be invoked to bar State courts from exercising their jurisdiction with respect to part of a subject which the Congress has expressly excluded from federal regulation no matter how comprehensive and detailed the congressional regulation of the remainder of the subject. No question of preventing conflict with, or of preserving the uniformity of, a policy declared by Congress can arise with respect to part of a subject which Congress has expressly excluded from its legislation. Obviously, the doctrine of primary administrative jurisdiction is inapplicable to the instant case. Moreover, that doctrine is inapplicable to the case at bar under the further established principle that the doctrine of primary administrative jurisdiction cannot be successfully invoked when a case presents solely a question or questions of law.

F. Petitioners' argument rests primarily upon the contention that the decision of the Minnesota courts conflicts with "doctrines of pre-emption" enunciated in *Garner v. Teamsters' Union*, 346 U. S. 485; *Weber v. Anheuser-Busch*, 348 U. S. 468; and *San Diego Council v. Garmon*, 359 U. S. 236. Each of those cases involved an area of labor relations which admittedly came within the operation of the NLRA as amended and with respect to which the Congress had provided comprehensive substantive regulations, detailed procedures and specific remedies and created a special tribunal to administer them subject only to prescribed and limited judicial review. Patently none of these cases is apposite; and none supports Petitioners' argument.

G. As a secondary argument, Petitioners contend at great length that the decision of the Minnesota courts conflicts with *National MEBA v. NLRB*, 274 F. 2d 167 and *Schauffler v. Local 101, MEBA*, 180 F. Supp. 932. If this assertion were true, it would not follow that the decision of the Minnesota courts was wrong. However, for numerous reasons, which are set forth *infra*, p. 27, but which cannot be adequately set forth in a summary of argument, neither decision is apposite. The Second Circuit, although criticizing the fragmentary, outdated and inconclusive evidence upon which the Board had based its finding and conclusion, held that it could not say that such evidence was insufficient to support the Board's finding and conclusion under the limited statutory review provided by the Congress as construed by this Court in *Universal Camera Corp. v. NLRB*, 340 U. S. 474.

In the *Schauffler* case, the District Court merely held, in a hearing on a motion for preliminary injunction, that the facts adduced (although "not too clearly developed"),

were sufficient to justify issuance of a temporary injunction to preserve the status quo until the Board could investigate a charge pending before it.

Each case involved a limited review of a proceeding before the NLRB. In each case the record, although sketchy, showed that most engineers employed on the towboats and tugboats involved were not supervisors and that it was doubtful whether the other engineers were supervisors. Neither involved the question whether either a state or federal court can exercise jurisdiction to determine whether an action before it involves an area of labor relations which Congress has expressly excluded from the operation of NLRA as amended and hence, from the jurisdiction of the NLRB, and if the court finds upon the evidence before it that the case does fall within such an excluded area, exercise its jurisdiction.

H. Petitioners make no attempt to demonstrate that the engineers and assistant engineers employed by Respondents were not supervisors, that labor relations between supervisors and their employers are not excluded from the operation of the NLRA as amended or that the picketing of MEBA Local 101 was not exclusively directed to labor relations between Respondents and their supervisor engineers. Instead, Petitioners argue that if a union of supervisors elects to accept one or two non-supervisors as members, it can effectively circumvent and nullify the congressional exclusion of labor relations between supervisors and their employers from the operation of the NLRA as amended. Apart from the fact that there is no factual basis for this argument in the record of the case at bar, this Court will not permit, and *a fortiori*, will not aid, such a devious scheme to evade the clear intent of the Congress.

ARGUMENT.

I. THE AREA OF LABOR RELATIONS BETWEEN SUPERVISORS AND THEIR EMPLOYERS WAS EXPRESSLY EXCLUDED FROM THE OPERATION OF THE NATIONAL LABOR RELATIONS ACT, AND FROM THE JURISDICTION OF THE NATIONAL LABOR RELATIONS BOARD, BY THE AMENDMENTS MADE TO THAT ACT IN 1947 BY TITLE I OF THE LABOR MANAGEMENT RELATIONS ACT, 1947.

Prior to the decision of this Court in *Packard Co. v. Labor Board*, 330 U. S. 485 (Mar. 10, 1947), there was uncertainty as to whether supervisors were employees within the meaning of the National Labor Relations Act of 1935. In holding that supervisors were employees within the meaning of the 1935 Act, this Court relied upon the circumstance that the term "employee," as defined in the 1935 Act, included "any employee" without qualification, limitation or exception whatsoever and that supervisors are obviously employees both in common usage of the word "employee" and in its "most technical sense at common law." (l. c. 488.) Promptly after that decision, Congress enacted Title I of the Labor Management Relations Act, 1947, which amended the 1935 Act for the expressly declared purposes of excluding the area of labor relations between supervisors and their employers from the operation of that Act and of returning the regulation thereof to the several States. Sen. Rep. 105, 80th Cong. 1st Sess.; House Rep. 245, 80th Cong. 1st Sess.

First: Congress amended the definition of the term "employee" so that, so far as here material, it now reads (29 U. S. C. 152(3)):

> "The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless this subchapter explicitly

states otherwise, * * * *but shall not include* * * * *any individual employed as a supervisor*, * * *."

Thus, the Congress specifically excluded "supervisors" from the operation of the Act. While the following is not, we believe, of significant or controlling importance in the instant case, a further inevitable and intended effect of the foregoing definition of the term "employee" was to exclude any union of supervisors from the category of a "labor organization" as defined in Section 2(5), 29 U. S. C. 152(5) with respect to collective bargaining, organizational activities or any other facet of labor relations between supervisors and their employers. (App. B, 42, 44.)

Second: With respect to the meaning of the term "labor organization", Congress further provided that "When used in this subchapter" (i.e., NLRA, as amended):

> "The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." 29 U. S. C. § 152(5), Act of June 22, 1947, 61 Stat. 136, 138.

Third: In order to avoid any possibility that the exclusion of supervisors from the operation of the 1935 Act as amended might be defeated or emasculated by some unforeseen construction of the term "supervisor," Congress incorporated in the 1935 Act a clear and specific definition of that term, which reads (29 U. S. C. 152(11)):

> "The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, *or* discipline other employees, *or* responsibility to direct them, *or* to adjust their griev-

> ances, *or* effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

It will be noted that the congressional definition of the term "supervisor" is in the disjunctive and that, if an employee has authority to do any one of the things set forth in the definition, he is a supervisor. *NLRB v. Edward G. Budd Mfg. Co., et al.*, 169 F. 2d 571, 576 (6th Cir.), cert. den. 335 U. S. 908; *Ohio Power Co. v. NLRB*, 176 F. 2d 385, 387 (6th Cir.), cert. den. 338 U. S. 899; *NLRB v. Fullerton Pub. Co.*, 283 F. 2d 545, 548 (9th Cir.).

In the instant case the Minnesota Courts found:

> "13. All engineers and assistant engineers employed on Interlake vessels stand watches during which they are in charge of and responsible for the operation and condition of the vessel's propulsion mechanism and responsibly direct, control and supervise the work of the firemen, oilers and coal passers on duty during such watch; they hire, fire, transfer and change the status of and discipline the persons working under them and have authority to and do make effective recommendations respecting the employment and tenure of employment of the people working under them; they handle initially grievances of the employees who are subject to their supervision; the exercise of authority by the engineers and assistant engineers requires the use of independent judgment and discretion; and all such engineers are required to be licensed by the United States Coast Guard." (R. 32, Fdg. 13.)

Petitioners do not, and could not successfully, challenge the foregoing (or any other) finding of fact made by the Minnesota courts. Consequently, that all of the engineers employed on steamships owned by Interlake and operated

by P-M were supervisors, is conclusively established for the purposes of the instant case.

Fourth: In 1947 Congress further amended the 1935 Act by adding thereto a new section, which reads:

> "*Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization*, but no employer subject to this subchapter shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining." Act of June 23, 1947, ch. 120, Title I, § 14(a), 61 Stat. 136, 151, 29 U. S. C. 164(a).

Manifestly, Congress shared common knowledge that an employer would not and could not employ supervisors unless he also had other employees to be supervised whose labor relations would necessarily come within the operation of the NLRA as amended. Consequently, to hold that the italicized language in the above quotation of Section 14(a) was intended to nullify, or has the effect of nullifying, the exclusion of labor relations between supervisors and their employers from the operation of NLRA, as amended, whenever a supervisor or supervisors choose to become or remain a member of a union whose membership also includes some nonsupervisory employees, would indefensibly attribute to the Congress the doing of a vain and futile thing.

The purposes of Congress in enacting Section 14(a) were, *first*, to make certain that the Act, as amended, or its mere existence, would not be held to prohibit supervisors from becoming or remaining members of a labor organization where permitted by State law, and, *second*, that nothing in the NLRA as amended *or in State law* should be effective to require employers to bargain collectively with

supervisors who, in the opinion of Congress, act as representatives or agents of their employer. Congress deemed the principle, that an employer should not be compelled to "have as his agent one who is obligated to those on the other side" (App. B 42, 43), so important that, in returning supervisors "to the basis which they enjoyed before the passage of the Wagner Act" (App. B 44), Congress expressly provided that an employer should not be compelled "to treat supervisors as employees for the purpose of collective bargaining or organizational activity" (App. B 42, 43, 44), for the "purpose of any law, either national or *local*, relating to collective bargaining."

The language by which Congress undertook to exclude labor relations between supervisors and their employers from the operation of the NLRA as amended and from the jurisdiction of the NLRB, is too clear to justify or require resort to legislative history. *Ohio Power Co. v. NLRB*, 176 F. 2d 385, 387, cert. den. 338 U. S. 899. However, were that language otherwise open to a different interpretation, the intent of Congress to exclude the area of labor relations between supervisors and their employers from the operation of the Act and from the jurisdiction of the Board is conclusively shown by the legislative history of the 1947 amendments to that Act. (App. B 42-44.)

As aptly stated by Judge Clark in *A. H. Bull Steamship Co. v. National MEBA*, 250 F. 2d 332 (2nd Cir.) at 339:

> "* * * The legislative history of § 14(a) makes it clear that Congress intended the quoted clause to describe statutes which require employers to bargain collectively or be guilty of an unfair labor practice or its state law equivalent. The whole thrust of the supervisor provisions in the Taft-Hartley Act of 1947 was to remove supervisors from the operation of the National Labor Relations Act and return them 'to the

to exercise their jurisdiction in deference to the substantive regulation, procedure, remedy and tribunal provided by the Congress.

San Diego Unions v. Garmon, 359 U. S. 236, likewise involved an area of labor relations which admittedly fell within the detailed federal regulation provided by the Congress. After instituting a representation proceeding before the National Labor Relations Board and while that proceeding was still pending, Garmon brought an action in a California court which granted an injunction and awarded damages upon the ground that the interim declination of jurisdiction by the NLRB permitted a State court to exercise jurisdiction. When that judgment was reviewed in *San Diego Unions v. Garmon*, 353 U. S. 26, this Court reversed the decree of injunction upon the ground that the refusal of the NLRB to assert jurisdiction did not leave with the States power over activities which otherwise would be pre-empted from State regulation but remanded the case to the California court with directions to consider and decide the questions of State law which were relevant to the award of damages.

When the subsequent judgment of the State court sustaining the award of damages was reviewed in *San Diego Unions v. Garmon*, 359 U. S. 236, this Court held that the California court could not award damages for conduct which, as had been held on the first review, the California court could not enjoin.

The rationale of this holding, as we read the decision, was that conduct can be as effectively regulated by a system of awarding damages as by direct preventive relief and, consequently, that a State court could not exercise its jurisdiction to award damages for conduct with respect to which the Congress had provided comprehen-

sive substantive regulation, detailed procedure, specific remedy or remedies, and a special tribunal to administer them.

It is, we submit, manifest that nothing in the *Garner Weber* or *Garmon* decisions supports Petitioners' contention that the decision of the Minnesota courts conflicted with the doctrines of pre-emption enunciated in those cases.

1. *The Asserted Conflict Between the Decision of the Minnesota Courts and Two Decisions of Lower Federal Courts Is Without Substance: National MEBA v. NLRB*, 274 F. 2d 167 (2nd Cir.), involved activities of a co-operative organization (called the "Rivers Joint Organizing Committee" or RJOC), which had been set up by MEBA and two other unions for the purpose of carrying out a joint effort to organize "the *entire crews* of commercial vessels on the Mississippi and its tributaries." (l. c. 168-9.)[5] The specific activity of RJOC, which was involved in the proceeding being reviewed by the Second Circuit, was directed to organizing the entire *crews* of two tow-boats which were operated by the S & S Towing Company (hereinafter called "S&S"), principally on the Illinois River. The engineers employed on one tow-boat had no one to supervise and no supervisory duties or authority. Of the three engineers employed on the other tow-boat, at least one seemingly had no supervisory duty or authority

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[5] As noted, *supra*, p. 18, fn. 3, the NLRB had emphasized the wide and controlling distinction between the supervisor status of engineers and assistant engineers employed on the bulk cargo ships of Respondents and of other bulk cargo carriers on the Great Lakes and the generally non-supervisor status of such engineers, if any, as are employed on towboats, tugboats and motor boats operating on rivers and other restricted inland waters.

basis which they enjoyed before the passage of the Wagner Act.'

* * * * *

Bull can refuse to bargain, discharge the supervisors, and be guilty of no unfair labor practice or conduct proscribed by any other law, either national or local, relating to collective bargaining."

II. THE MINNESOTA COURTS HAD, AND PROPERLY EXERCISED, JURISDICTION IN THE INSTANT CASE; AND PETITIONERS' ARGUMENTS TO THE CONTRARY ARE BASED UPON THE APPLICATION OF ERRORS OF LAW TO AN UNSUPPORTED AND ERRONEOUS ASSUMPTION OF FACT.

A. The Issue as Defined and Delimited By the Facts Alleged, Proved and Found in the Minnesota Courts.

All engineers and assistant engineers employed on Respondents' steamships are supervisors (R. 32, Fdg. 13; R. 34, Concl. 2). The evidence showed, and the Minnesota courts found, only that MEBA Local 101 "admits to membership licensed marine engineers employed on commercial vessels on the Great Lakes" (R. 39, Fdg. 2).[3]

The activities of MEBA Local 101, which constituted the subject matter of the instant case, were directed exclusively (1) to coercing Respondents into an agreement or understanding with MEBA Local 101 which would establish a "union shop" for Respondents' engineers, (2)

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[3] The size of commercial vessels operating on the Great Lakes and their crews are such that all engineers and assistant engineers employed thereon are supervisors as defined in Section 2(5) of the NLRA as amended. *Globe Steamship Co., et al.*, 85 NLRB 475; *The Cleveland Cliffs Iron Co.*, 117 NLRB 668; *Hutchinson & Co., et al.*, 101 NLRB 90. The wide distinction between engineers employed on such commercial vessels and engineers employed on tugboats or towboats operating on rivers or other enclosed waters is emphasized in *Graham Transportation Co.*, 124 NLRB 960 at 962, which Petitioners cite (Pet. Br. 16-7).

to coercing Respondents into exercising force or compulsion on their engineers to become members of MEBA Local 101 and (3) to coercing and intimidating Respondents into recognizing MEBA Local 101 as the collective bargaining agent for the engineers and assistant engineers employed on Respondent's steamships. (R. 32-3, Fdgs. 15-17.)

As courts of general jurisdiction, the Minnesota State courts had power, and the duty, to decide all questions of fact and law upon which their jurisdiction, or their right to exercise jurisdiction, in the instant case depended. *Texas & Pacific Ry. v. Gulf etc. Ry. Co.*, 270 U. S. 266; *Minneapolis etc. Co. v. Peoria etc. Co.*, 270 U. S. 580; *Stoll v. Gottlieb*, 305 U. S. 165.

Petitioners do not cite, and we are not aware of, any decision of this Court which holds that the foregoing fundamental principle does not apply to an action brought in the State courts merely because its subject matter involves some phase of labor relations. Instead, in cases coming before this Court where the question is whether a State Court could properly exercise its jurisdiction in a case whose subject matter admittedly fell within an area of labor relations covered by the National Labor Relations Act as amended, there is no suggestion that the foregoing fundamental principle is not applicable or that the facts alleged or properly found in the State Court did not define and delimit the issue as to whether the State Court could properly exercise its jurisdiction.[4] E.g., see, *Weber v. Anheuser-Busch*, 348 U. S. 468, 481.

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[4] As noted *supra* 3, fn. 2, Petitioners' Statement of the Case, among other defects, includes assertions of alleged facts which are not supported by, but are contrary to, the findings entered on final hearing and, in some instances, even misstate the alleged authority for such assertions. In Petitioners' Argument one of such erroneous assertions becomes:

(Continued on following page.)

Consequently, upon the facts alleged, established by the evidence and found by the Minnesota courts, the sole issues before this Court are whether the Minnesota Courts correctly held, *first*, that all engineers and assistant engineers employed on Respondents' ships are supervisors within the meaning of Section 2(11) of the NLRA as amended, *second*, that the subject matter of the instant case fell within an area of labor relations which the Congress expressly excluded from the operation of the NLRA as amended and from the jurisdiction of the NLRB and *third*, that they had, and could properly exercise, jurisdiction to enjoin MEBA Local 101 and its associates from a continuing violation of the statutes and public policy of the State of Minnesota.

Manifestly, each of the foregoing questions presents *a pure question of law*. Neither involves any issue of fact and, *a fortiori*, neither presents a factual issue which is not within the conventional experience of judges, which requires or permits the exercise of administrative discretion or which involves or permits the exercise of administrative expertise either actual or resting upon legislative fiat. There can be no interference with national policy, or the uniformity of national policy, in a field of labor relations which the Congress has expressly excluded from federal regulation.

(Continued from preceding page.)

"In the opinion of the trial court the record 'is clear that its [MEBA] membership is composed primarily and almost exclusively of supervisors,' (R. 18) * * *" Pet. Br. 9.

The sentence, which Petitioners thus purport to quote from the trial court's preliminary Memorandum on the motion for a preliminary injunction, actually reads:

"*The record in this case does not show that MEBA Local 101 admits to membership any nonsupervisory employees,* [fol. 35] and in any event it is clear that its membership is composed primarily and almost exclusively of supervisors." (R. 18.)

B. The Doctrine of Federal Pre-emption is Wholly Inapplicable.

Apart from the limited (and here irrelevant) area of labor relations covered by the Railway Labor Act, the field of labor relations was governed, prior to the passage of the National Labor Relations Act of 1935 (the Wagner Act), by the common law, statutes and public policy of the several States as interpreted and enforced by their respective courts. The Wagner Act was an exercise of the constitutional authority of Congress to regulate interstate and foreign commerce. *Labor Board v. Jones & Laughlin*, 301 U. S. 1. Federal regulation of labor relations was sustained not because they constituted interstate commerce but because they affected interstate commerce which the Congress had constitutional authority to protect and promote. Labor relations did not, and do not, constitute a field in which, even where Congress has been silent, the States may not act at all. Consequently the effect of congressional legislation in this field upon the authority of the States to exercise their police power must be determined by the application of principles by which our dual constitutional system has been construed throughout our national history.

First, when Congress legislates in a particular field, congressional intent to bar the States from exercising their police power in ways which do not conflict, and are not inconsistent, with the federal legislation, will not be inferred from its mere enactment. Congressional intent so to do must be clearly manifested and may not be based upon implication. *Savage v. Jones*, 225 U. S. 501, 533-9; *Illinois Central R. Co. v. Public Utilities Comm.*, 245 U. S. 493, 510. *Townsend v. Yeomans*, 301 U. S. 441, 454; *Kelly v. Washington*, 302 U. S. 1, 10.

Second, the authority of the Congress to exercise part, but not all, of its constitutional power to regulate particular subject matter and, *a fortiori*, to exclude part of that subject matter from federal regulation, has never been questioned or doubted. When the Congress chooses to exercise less than the full scope of its constitutional authority in a particular field, the congressional legislation may not be construed as barring the States from exercising their police power in that field in any way which does not conflict, and is not inconsistent, with the federal legislation unless the Congress expressly declares its intent so to do. Congressional power to exercise its paramount authority in a particular field carries with it congressional authority to limit federal regulation or, otherwise stated, to exclude part of the field from federal legislation. In that situation the right of the States to exercise their police power in the excluded area of the field rests not only upon fundamental principles of constitutional interpretation but upon the affirmative action of the Congress. *A. T. & S. F. R. Co. v. Railroad Comm.*, 283 U. S. 380, 392, 393. *A. C. L. v. Georgia*, 234 U. S. 280, 290; *Gilvary v. Cuyahoga Valley R. Co.*, 292 U. S. 57, 60. See also, *Co-op Refining Corp. v. Williams*, 185 Kansas 410, 345 P. 2d 709, cert. den. 362 U. S. 920; *McLean Co. v. Brewery, etc. Drivers Local 993*, 254 Minn. 204, 94 N. W. 2d 514, cert. den. 360 U. S. 917.

Even with respect to the area of labor relations which admittedly falls within the scope of the National Labor Relations Act, this Court has repeatedly said, in varying language, that the "Congress did not exhaust the full sweep" of its constitutional authority and left "much to the States." *Weber v. Anheuser-Busch*, 348 U. S. 468, 480; *Garner v. Teamsters Union*, 346 U. S. 485, 488; *Auto Workers v. Wisconsin Board*, 336 U. S. 245, 253, 254; *Machinists v. Gonzales*, 356 U. S. 617, 619. By the 1947

amendments to the National Labor Relations Act of 1935 the Congress expressly excluded labor relations between supervisors and their employers from federal regulation under that Act. *Supra*, pp. 13-18. Manifestly, the doctrine of federal pre-emption cannot be successfully or rationally invoked to bar State Courts from exercising their jurisdiction to enforce the statutes or public policy of the States in an area of labor relations which the Congress has specifically and intentionally excluded from federal regulation.

C. The Doctrine of Primary Administrative Jurisdiction is Plainly Inapplicable.

The doctrine of primary administrative jurisdiction rests upon the hypotheses that a particular case raises issues of fact which are not within the conventional experience of judges, which require the exercise of administrative discretion, or which require the exercise of administrative expertise by agencies to which the Congress has entrusted regulation of the subject matter. Fundamentally, the doctrine of primary administrative jurisdiction rests upon the same foundation as does the doctrine of federal preemption and assumes that its application is required to give effect to a clearly expressed intent of the Congress. It is not, we believe, a tool devised by the courts to minimize their burdens in performing their judicial functions. Even where the subject matter of a case clearly falls within the area of a field covered by congressional legislation the administration of which Congress has entrusted primarily to an administrative agency, the doctrine does not apply when the issue presented is solely a question of law. *W. P. Brown & Sons Lbr. Co. v. L. & N. R. Co.*, 299 U. S. 393, 398; *B. & O. R. Co. v. Brady*, 288 U. S. 448, 457.

In the case at bar, the questions presented are whether, upon the facts established by the evidence and the findings, the Minnesota Courts correctly decided certain pure questions of law. *Supra*, pp. 18-20. Plainly, the instant case does not raise any issue which is not within the conventional experience of judges, which requires or permits the exercise of administrative discretion or which involves the exercise of any administrative expertise, either real or fictional and no conceivable basis exists for application of the doctrine of primary administrative jurisdiction. Indeed, to hold to the contrary would require a court to nullify the declared intent of the Congress and to amend the statute by a process of judicial legislation.

D. Petitioners' Arguments That Either the Doctrine of Federal Pre-emption or the Doctrine of Primary Administrative Jurisdiction Barred the Minnesota Courts From Exercising Their Jurisdiction in the Instant Case, are Without Substance.

Petitioners' primary argument is that the decision of the Minnesota courts conflicts with "doctrines of pre-emption" enunciated by this Court in *Garner v. Teamsters Union*, 346 U. S. 485, *Weber v. Anheuser-Busch*, 348 U. S. 468 and *San Diego Council v. Garmon*, 359 U. S. 236. To demonstrate the fallacy in Petitioners' reliance upon those cases it is sufficient to point out that none of them involved the question whether State courts can exercise their jurisdiction in a case whose subject matter is an area of labor relations which the Congress expressly excluded from federal regulation. If, as hereinafter shown, the Minnesota courts correctly held that the instant case involves subject matter which the Congress expressly excluded from federal regulation, it is idle to argue that the exercise of their jurisdiction was barred by doctrines of fed-

eral pre-emption or primary administrative jurisdiction. Obviously, under the National Labor Relations Act, as amended, the area of labor relations between supervisors and their employers is "governable by the State or it is wholly ungoverned." *Auto Workers v. Wisconsin Board*, 336 U. S. 245, 254.

Garner v. Teamsters Union, 346 U. S. 485, involved labor relations between nonsupervisor employees and their employer and fell within the area of labor relations with respect to which the Congress had provided detailed substantive regulations, had prescribed comprehensive remedies for a violation of the substantive regulations, had prescribed the procedure for invoking and implementing those remedies, and had expressly entrusted the administration of this comprehensive legislation to a specially constituted tribunal, to wit, the National Labor Relations Board. As we read the *Garner* case, it merely holds that the States cannot provide supplementary, additional or different remedies and tribunals for dealing with the same conduct as that with respect to which the Congress has comprehensively legislated.

Weber v. Anheuser-Busch, 348 U. S. 468, also involved an area of labor relations which the Congress had specifically and completely regulated in the National Labor Relations Act. Indeed, the complaint in the State court alleged that the defendant Union had violated several provisions of the National Labor Relations Act, as amended. As we read the *Weber* case this Court merely held that, where an action in a State court involves an area of labor relations which is admittedly covered by the federal Act, and conduct which is arguably protected by Section 7, or arguably prohibited by Section 8, of the National Labor Relations Act, as amended, the State courts must decline

(l. c. 172); Intermediate Report of Trial Examiner, *National Maritime Union, et al.*, 121 NLRB 208 at 213, 219. Moreover, the activities of MEBA and the other unions acting jointly through RJOC were directed to organizing the "*entire crews*" which obviously included crew members, who admittedly were not supervisors.

In this aspect of the review proceeding, the sole question before the Second Circuit was whether the finding and conclusion of the Board, that MEBA and MMP, when participating in the joint organizing efforts carried on through RJOC, were severally acting as a "labor organization" within the meaning of Section 8(b) of NLRA, was supported by evidence. After criticizing the fragmentary, dubious and outdated evidence upon which the Board had based its finding and conclusion, the Court noted that MEBA had failed to introduce rebutting evidence which, if it existed, was plainly within its knowledge and under its control (l. c. 174-5), and said:

> "We therefore cannot say the Board's finding that MEBA and MMP were labor organizations did not meet the standards laid down in Universal Camera Corp. v. N. L. R. B., 1951, 340 U. S. 474, 71 S. Ct. 456, 95 L. Ed. 456. *We are not saying that MEBA and MMP are or are not in fact 'labor organizations' within the meaning of § 8(b) today.* We say only that we cannot hold, on the evidence in this record, that the Board was unjustified in finding that they were in April, 1957." (l. c. 175.)[6]

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[6] In the course of its opinion in the above case, the Second Circuit also said:

> "Of course, determination that a union is a "labor organization" because "employees participate" is only the beginning of the inquiry, not the end. For in the case of many practices spelled out in § 8(b), it is necessary not only that "employees participate" in the organization charged but also that the conduct deal with "employees." (l. c. 173.)

(Continued on following page)

In *United States v. National MEBA, et al.*, 294 F. 2d 385 (2d Cir.) that Court, speaking through the same Judge, said:

> "In National Marine Engineers Beneficial Ass'n v. N. L. R. B., 2 Cir., 1960, 274 F. 2d 167, *though we accepted the proposition that a union comprised wholly of supervisors would not be a 'labor organization' within § 8(b) of the National Labor Relations Act, 29 U. S. C. A. § 158(b)*, we held that, *on the facts there presented*, the Board was justified in finding that non-supervisory employees participated in these two unions and hence in holding them within that section." (l. c. 390.)

Manifestly, the careful circumscribed holding of the Second Circuit related to a wholly different issue and a wholly different factual situation than those presented in the instant case. Since Section 14(a) provides that "Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization," Congress manifestly contemplated supervisors might become or remain members of a labor organization or union either in a separate local or on an integrated basis. Obviously, when a union whose membership includes both employees and supervisors engages in activity directed to labor relations between employees

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Since the object and purpose of the activities being carried on by the unions participating in RJOC were to organize the "entire crews" employed on towboats and tugboats, their conduct obviously dealt with "employees." However, upon the question whether the subject matter of a State case falls within an area of labor relations which Congress has excluded from the NLRA as amended, manifestly the answer does not turn, as Petitioners argue, upon an interpretation of the term "labor organization" as used in § 8 of the NLRA as amended. In the instant case, there was no proof of participation or membership by "employees" in MEBA Local 101; and the conduct of MEBA Local 101 was directed exclusively to labor relations between Respondents and the engineers employed on their ships, all of whom were and are supervisors.

and their employers, it is acting as a labor organization and its conduct may be such as to be prohibited by Section 8(b) or to be protected by Section 7.

However, to hold that when such a union engages in activities directed exclusively to labor relations between supervisors and their employers, such activities are governed by the NLRA and pre-empted from State jurisdiction, would completely nullify the clear congressional purpose to exclude labor relations between supervisors and their employers from federal regulation and, except as expressly limited, to leave their regulation to the States. Such a construction of the congressional language, where otherwise permissible, is precluded by established principles of statutory interpretation. *United States v. Ryan*, 350 U. S. 299, 305-7; *United States v. National MEBA*, 294 F. 2d 385, 390-3. Plainly, Petitioners' argument, that the inclusion of one or two employees among the membership of a union of supervisors defeats the congressional intent and deprives States of jurisdiction, is untenable and, if accepted, would enable supervisors, by a very simple device, to evade their exclusion from the NLRA, as amended. *A. H. Bull Steamship Co. v. National MEBA*, 250 F. 2d 332 (2nd Cir.) at 336. Moreover, to establish that such a union is acting in a particular situation as a "labor organization" within the meaning of Section 2(5), the evidence must establish that its membership "includes, in substantial number or proportion, persons who are employees" and who participate in the union "in a substantial and meaningful manner." *International Masters, Mates and Pilots v. NLRB*, not officially reported, 2 Labor Rel. Rep. (48 LRRM) 2624 (D. C. Cir.).

Schauffler v. Local 101 MEBA, 180 F. Supp. 932 (E. D. Pa.), which Petitioners also cite (Pet. Br. 5, 13-4), involved a preliminary and even more tentative holding in

a hearing on a petition by the NLRB for a temporary injunction to preserve the status quo pending investigation of a complaint by the Board. The facts, which were "not too clearly developed" (l.c. 935), were, the Court thought, sufficient to show that the Board "had reasonable cause to believe" that the two engineers employed on one of the employer's tugs probably were not supervisors, that no engineers were employed on the other three tugs or on the five barges operated by the employer and that engineers could be hired and used in inferior jobs, such as deck-hands or other ship employees. (l. c. 933-4; Fdgs. 4(c), 5, 9; l. c. 935, par 5[1].)

Petitioners' contention, that the decision of the Minnesota courts conflicts with the foregoing decisions of the Second Circuit and of a District Court in Pennsylvania, is plainly fallacious.

First, an indispensable foundation for Petitioners' contention is that MEBA Local 101, although "composed primarily and almost exclusively of supervisors" (Pet. Br. 9), may have two or three members who are not supervisors. Were it material, this factual assumption conflicts squarely with the facts found in the instant case which Petitioners do not, and could not successfully, challenge. *Supra* p. 15.

Second, neither the 2nd Circuit case nor the *Schauffler* case involved the question whether a State court could have exercised its jurisdiction even upon factual bases such as were presented in those cases and, *a fortiori*, upon the wholly different factual bases established in the Minnesota case.

Third, if, as hereinafter shown, the Minnesota courts correctly held that the subject matter of the instant case fell within an area of labor relations which the Congress expressly excluded from federal regulation under the

NLRA as amended, it would be immaterial whether MEBA Local 101, by engaging in different conduct for some different purpose, might be found to be acting as a "labor organization" within the meaning of Section 8(b) or might be subject to some other federal statute such as the National Emergency provisions of Title II of the Labor Management Relations Act, 1947.

The courts will not permit MEBA or MEBA, Local 101, to defeat the plain congressional purpose by claiming without proof, whenever its conduct is under scrutiny in a State court, that it may have some nonsupervisor members or may sometimes have engaged in different conduct or activities which fell within Section 8(b)—or by claiming, whenever it engages in activities involving labor relations between "employees" and their "employers" as defined in the NLRA, as amended, that its conduct is exempt from federal regulation because it is a union of supervisors. *United States v. Ryan*, 350 U. S. 299, 305-7; *United States v. National MEBA*, 294 F. 2d 385, 390-3. Judicial approval of such a theory would be to hold that the Congress, by excluding labor relations between supervisors and their employers from the NLRA and remitting their regulation to the States, in fact intended to leave this area of labor relations wholly ungoverned.

Fourth, if, as hereinafter shown, the Minnesota courts correctly held upon the uncontroverted facts that the instant case fell within an area of labor relations which the Congress excluded from the NLRA, it is immaterial whether some or all of the reasons assigned by the Minnesota courts for reaching a correct decision was or were erroneous.

Fifth, each of the cases cited by Petitioners involved review of proceedings theretofore had or simultaneously pending before the National Labor Relations Board. It

may be conceded that when a proceeding is instituted before that Board, it has jurisdiction to determine (subject to review by a federal court of appeals and ultimately by this Court) whether the facts bring the proceeding within the scope of the NLRA, as amended, and hence within the jurisdiction of the Board. However, that is a far cry from the seeming assertion of Petitioners that State courts cannot exercise their jurisdiction in a case where the proof establishes that the subject matter falls within an area of labor relations which the Congress has expressly excluded from the NLRA, as amended, and hence from the jurisdiction of the NLRB.

III. THE MINNESOTA COURTS PLAINLY HAD, AND PROPERLY EXERCISED, JURISDICTION IN THE CASE AT BAR.

The bill which became the Labor Management Relations Act, 1947, included five Titles which covered different subjects all or some of which could as well have been dealt with in separate bills. We are here concerned only with Title I, which amended the National Labor Relations Act of 1935 in the respects which are controlling in the case at bar. Both the language and legislative history of these amendments make inescapably clear the intent of Congress to exclude labor relations between supervisors and their employers from the NLRA and hence, from the jurisdiction of the National Labor Relations Board. *Supra*, pp. 16-17. If, contrary to our belief, the language used by the Congress to effect this exclusion were otherwise ambiguous, this Court would not permit any ineptness of language, or the literal construction of particular phrases, to defeat the congressional intent. *United States v. Ryan*, 350 U. S. 299, 305-7; *United States v. National MEBA*, 294 F. 2d 385, 390-3.

The facts alleged, shown by the evidence and found by the Minnesota courts, establish only that MEBA local 101 admits to membership licensed marine engineers employed on the large bulk cargo freighters operating on the Great Lakes. All engineers and assistant engineers employed on Respondents' ships were and are supervisors. Even if, contrary to the fact, MEBA Local 101 had shown that its membership included some "employees" as defined in the NLRA, as amended, the activities of MEBA Local 101, which were the subject matter of the instant case, were directed exclusively to coercing the Respondents into recognizing Local 101 as the collective bargaining representative of the supervisor-engineers employed on Respondents' ships and to coercing such supervisor-engineers into becoming members of MEBA Local 101. *Supra*, pp. 6-7. Manifestly, upon the facts alleged, proved and found in the instant case, both MEBA Local 101 and the activities in which it was engaged, fell, *as a matter of law*, within an area of labor relations which the Congress had specifically, deliberately and intentionally excluded from the operation of the NLRA, as amended, and hence, from the jurisdiction of the NLRB.

Exercising jurisdiction in an area of labor relations which Congress had so excluded from the NLRA, the Minnesota courts found and held that the activities of MEBA Local 101 violated the statutes and the public policy of the State of Minnesota and granted injunctive relief. The interpretation and application of State law by the Minnesota Supreme Court is conclusive in this Court; and no question of State law is or could be challenged by Petitioners. *E.g. Aero Transit Co. v. Commissioners*, 332 U. S. 495, 499-500.

Manifestly, in the foregoing situation neither the doctrine of federal pre-emption nor the doctrine of primary

administrative jurisdiction can be successfully invoked to stay or exclude the exercise of jurisdiction by the Minnesota courts. There is here no room for the application of either doctrine by inference or implication tortiously drawn from the existence or language of the National Labor Relations Act as amended; for we here deal with an area of labor relations which the Congress expressly excluded from that Act.

There is here no factual basis for Petitioners' argument based upon an assumption (refuted by the findings) that MEBA Local 101 might have two or three members who are not supervisors or, in any event, might engage in some wholly different activity for a wholly different purpose which might come within the NLRA as amended or some other federal statute. However, even if there had been support in the record for Petitioners' factual assumption, their argument would still be clearly erroneous. Congress did provide that nothing in the 1947 amendments should be interpreted to prohibit "any individual employed as a supervisor from becoming or remaining a member of a labor organization." (Section 14(a).) To interpret this language as meaning that a union of supervisors may circumvent the congressional exclusion of labor relations between supervisors and their employers from the NLRA, as amended, by the simple expedient of including some non-supervisor members (either in separate locals or on integrated basis), would be to attribute to the Congress an intent to do a futile thing, that is, painstakingly to exclude this area of labor relations from the NLRA, as amended, and simultaneously to nullify such exclusion by providing in Section 14(a), *first*, that nothing in the NLRA as amended should be held to prohibit supervisors from becoming or remaining members of a labor organization where permitted by State law and, *second*,

that nothing in that Act as amended or in State law should be effective to require employers to bargain collectively with supervisors who, in the opinion of Congress, represented the employer or management and could not properly be granted the rights provided for "employees" as defined in the Act. *Supra*, pp. 15-18.

Undoubtedly, a union, like a corporation or individual, may act in different capacities and for different purposes; and its rights and obligations may be measured by different law in one instance than in the other. Thus, a corporation, which is authorized both to administer trusts and to engage in commercial banking, is subject to different law, depending upon the situation and capacity in which it acts. In *A. H. Bull Steamship Co. v. National MEBA*, 250 F. 2d 332 (2d Cir.), the court in discussing Sections 2(3), 2(5) and 14(a) of the NLRA, as amended, said:

> "In order to effectuate Congress' avowed intention to remove supervisors from the protections of the National Labor Relations Act, this definition must be interpreted to mean an organization of 'employees' covered by the collective bargaining agreement in question and which exists for the purpose of dealing with *their* employer. Otherwise individuals excluded by the Act could join unions which represent some 'employees' and gain the protections of the Act. Thus if MEBA were classified as a 'labor organization' for purposes of this action simply because some of its members who are not within this bargaining unit are statutory 'employees,' then supervisors could gain the protections of the Act by joining either vertically integrated unions or unions which, in some parts of the country, represent nonsupervisory personnel. This result was not intended by Congress." (l. c. 336.)

And further:

> "The legislative history of § 14(a) makes it clear that Congress intended the quoted clause to describe statutes which require employers to bargain collectively or be guilty of an unfair labor practice or *its state law equivalent*. The whole thrust of the supervisor provisions in the Taft-Hartley Act of 1947 was to remove supervisors from the operation of the National Labor Relations Act and return them 'to the basis which they enjoyed before the passage of the Wagner Act.'
>
> * * * * *
>
> Bull can refuse to bargain, discharge the supervisors, and be guilty of no unfair labor practice or conduct proscribed by any other law, either national or local, relating to collective bargaining." (l.c. 339.)

Where the right of a State Court to exercise jurisdiction turns upon the question whether the subject matter fell within an area of labor relations which the Congress had excluded from the operation of the National Labor Relations Act as amended, this Court held that a State Court had and could properly exercise jurisdiction to decide the controversy. *Higgins v. Cardinal Mfg. Co.*, 188 Kans. 11, 360 P. 2d 456, cert. den. 368 U. S. 829; *Algoma Plywood Co. v. Wisc. Emp. Rel. Board*, 336 U. S. 301.

Benz, et al. v. Compania Naviera Hidalgo, 353 U. S. 138, was an action brought to recover damages under State law caused by an American union picketing a foreign ship operated entirely by foreign seamen under foreign articles, while the vessel was temporarily in an American port. This Court held that the failure of Congress expressly to make the federal Act applicable to wage disputes arising on foreign vessels between national and other countries when such vessels come within territorial waters of the United States, constituted an implied exclusion from the federal Act and, consequently, that the federal

Act did not bar a remedy under State law for such damages.

Manifestly, a contrary holding in the *Benz* case would not have been controlling or apposite in the instant case. However, the holding in the *Benz* case, that neither the doctrine of federal pre-emption nor the doctrine of primary administrative jurisdiction barred the application of State law in an area of labor relations which is excluded from the NLRA, if at all, only by implication, does emphasize the absurdity of arguing, as Petitioners do, that such doctrines prevent the States from exercising their jurisdiction in an area of labor relations which the Congress expressly excluded from federal regulation.[7]

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[7] Since *Incres Steamship Co. v. International Mar. Wrks. Union*, 10 N. Y. 2d 218, 176 N. E. 2d 719 (cited Pet. Br. 18, fn. 12) is pending before this Court on a writ of certiorari, we deem it inappropriate to discuss the merits of that decision. Instead, we merely point out that the *Incres* case turns upon whether the doctrine of *implied exclusion* enunciated in the *Benz* case is applicable to the somewhat different factual situation presented in the *Incres* case. However that question may be decided by this Court, its decision is inapposite to the instant case which involves *any* area of labor relations that Congress *expressly excluded* from the operation of the NLRA as amended. The same observation applies to *Marine Cooks etc. v. Panama SS Co.*, 362 U. S. 365, which is also inapposite for the additional reason that it turned upon Section 4 of the Norris-LaGuardia Act, 29 U. S. C. §§ 101, 104.

CONCLUSION.

For each and all of the reasons stated in this brief, it is respectfully submitted that the decision of the Supreme Court of Minnesota should be affirmed.

Respectfully submitted,

RAYMOND T. JACKSON,
JAMES P. GARNER,
1956 Union Commerce Bldg.,
Cleveland 14, Ohio,

EDWARD T. FRIDE,
1200 Alworth Building,
Duluth 2, Minnesota,
Counsel for Respondents.

Of Counsel:

BAKER, HOSTETLER & PATTERSON,
NYE, SULLIVAN, MCMILLAN,
HANFT & HASTINGS.

APPENDIX A.

Statutes Involved.

The relevant provisions of the National Labor Relations Act as amended by the Labor Management Relations Act, 1947, are set forth below.

Act of June 23, 1947, c. 120, § 1(a) and §§ 2(3), 2(5), 2(11) and 14(a) of Title I, 61 Stat. 136, 137, 138, 151; U. S. Code, Title 29, §§ 152(3), 152(5), 152(11) and 164(a).

"AN ACT

"To amend the National Labor Relations Act, to provide additional facilities for the mediation of labor disputes affecting commerce, to equalize legal responsibilities of labor organizations and employers, and for other purposes.

* * * * *

"SECTION 1. (a) This Act may be cited as the 'Labor Management Relations Act, 1947.'

* * * * *

"TITLE I—AMENDMENT OF NATIONAL LABOR RELATIONS ACT

"SEC. 101. The National Labor Relations Act is hereby amended to read as follows:

* * * * *

" 'DEFINITIONS

" 'SEC. 2. When used in this Act—

* * * * *

" '(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, * * * but shall not include * * * any individual employed as a supervisor, * * *.

* * * * *

" '(5) The term "labor organization" means any organization of any kind, or any agency or employee

representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

* * * * *

" '(11) The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, *or* discipline other employees, *or* responsibly to direct them, *or* to adjust their grievances, *or* effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

* * * * *

" 'LIMITATIONS

" 'SEC. 14. (a) Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.' "

APPENDIX B.

Legislative History of Pertinent Amendments to The National Labor Relations Act Which Were Made by Title I of The Labor Management Relations Act, 1947.

A. Reports of Congressional Committees.

1. Senate Report No. 105 on S. 1126, 80th Cong., 1st Sess.

"It is natural to expect that unless this Congress takes action, management will be deprived of the undivided loyalty of its foremen. There is an inherent tendency to subordinate their interests whereever they conflict with those of the rank and file. * * *

"* * * the bill does not prevent anyone from organizing nor does it prohibit any employer from recognizing a union of foremen. It merely relieves employers who are subject to the national act free from any compulsion by this National Board or any local agency to accord to the front line of management the anomalous status of employees." (p. 5)

* * * * *

"Section 14: This is a new section which makes it clear that the amendments to the act do not prohibit supervisors from joining unions, but that it is contrary to national policy for other Federal or State agencies to compel employers who are subject to the National Board to treat supervisors as employees for the purpose of collective bargaining or organizational activity." (p. 28.)

2. House Report No. 245, H. R. 3020, 80th Cong., 1st Sess.

"The evidence before the committee showed this to be one of the most important and most critical problems. When Congress passed the Labor Act, we were concerned, as we said in its preamble, with the wel-

fare of 'workers' and 'wage earners,' not of the boss. It was to protect workers and their unions against foremen, not to unionize foremen, that Congress passed the Act." (p. 13.)

* * * * *

"So, by this bill, Congress makes clear once more what it tried to make clear when, in passing the act, it defined as an 'employer,' not an 'employee,' any person 'acting in the interest of an employer'; what it again made clear in taking up H. R. 2239 in 1943 and in dropping it when the Board decided the Maryland Drydock case, and what, for a third time, it made clear last year in passing the Case bill by a majority of about 2 to 1 and in barely falling short of enough votes to override the President's veto of that bill.

"The bill does not forbid anyone to organize. It does not forbid any employer to recognize a union of foremen. Employers who, in the past, have bargained collectively with supervisors may continue to do so. What the bill does is to say what the law always has said until the Labor Board, in the exercise of what it modestly calls its 'expertness,' changed the law: That no one, whether employer or employee, need have as his agent one who is obligated to those on the other side, or one whom, for *any* reason, he does not trust." (p. 17.)

B. Excerpts from Congressional Debates.

Statement by Senator Taft of Ohio:

"I shall try to summarize the changes which have been made. They are important. They make a substantial step forward toward the furnishing of equal bargaining power.

"The bill provides that foremen shall not be considered employees under the National Labor Relations Act. They may form unions if they please, or join

unions, but they do not have the protection of the National Labor Relations Act. They are subject to discharge for union activity, and they are generally restored to the basis which they enjoyed before the passage of the Wagner Act." 93 Cong. Rec. 3836 (1947).